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BEFORE THE

ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
COMMONWEALTH EDISON COMPANY)
) No. 07-0566
Proposed general increase in)
electric rates (Tariffs filed)
October 17, 2007)

Chicago, Illinois

August 22, 2008

Met, pursuant to notice, at

1 o'clock p.m.

BEFORE :

THE COMMISSION EN BANC

SULLIVAN REPORTING COMPANY, by
PATRICIA WESLEY
License No. 084-002170

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1 CHAIRMAN BOX: Pursuant to Section 200.850 of
2 the Administrative Rules of the Illinois Commerce
3 Commission to hear oral argument and rate case of
4 Commonwealth Edison Docket 07-0566, here in Chicago
5 are Commissioners Ford, O'Connell-Diaz, Lieberman,
6 and Elliott, and myself, Chairman Box.

7 On August 13, 2008, the Commission on
8 its own motion decided to hold the oral arguments.
9 The topics for the oral argument are:
10 (1) embedded cost-of-service allocation issues; (2)
11 the accumulated provisions for depreciation and
12 amortization and accumulated deferred income taxes;
13 (3) Rider SMP; and (4) underground cables and
14 services. A total of 160 minutes is allocated for
15 oral argument as indicated by the agenda.

16 Commonwealth Edison Company has the
17 burden of proof and shall present argument first on
18 its issue. Commonwealth Edison will have an
19 allotted time for 10 minutes, and if you wish to
20 reserve any rebuttal, it must do so in its allotted
21 time.

22 Following Com Ed's statement,

1 Commission staff and other parties may present their
2 arguments. The amount of time they are allotted is
3 specified on the agenda. A party's time may be
4 allowed to another party.

5 Time keep, could you please put the
6 monitor in plain view of the presenters and the time
7 keeper will also be monitoring your time.

8 Presenters will be given a warning one minute before
9 that time has expired, and one other presenter you
10 only have one minute so you will be given the start
11 and warning sign.

12 (Laughter.)

13 Before we begin, are there any
14 procedural questions?

15 (No response.)

16 We will begin with oral argument for
17 embedded cost of service allocation for Commonwealth
18 Edison, Emmitt House, John Rooney, John P.
19 Ratnaswamy, and Glenn Rippie; Staff of the Illinois
20 Commerce Commission and other parties to be
21 determined -- to be determined by the parties, and I
22 think there's been a change in batting order on my

1 list; first, the Attorney General; second, the City
2 of Chicago; third will be Illinois Industrial Energy
3 Consumers; fourth, Request Equitable Treatment Of
4 Costs Together; fifth, Building Operators and
5 Association; six will be Chicago Transit Authority;
6 seven, Citizens Utility Board and Commercial Group;
7 and eight the U.S. Department of Energy.

8 We will start with Commonwealth Edison,
9 Mr. Rooney.

10 ORAL ARGUMENT

11 BY

12 MR. ROONEY:

13 Mr. Chairman, Commissioners, good
14 afternoon. My name is John Rooney and I'm arguing
15 here on behalf of Commonwealth Edison Company with
16 regard to cost of service, revenue allocation, and
17 rate design issues.

18 I will be addressing two issues, and
19 before I do that, I have reserved seven minutes for
20 my direct and thirteen for rebuttal. The two issues
21 that I will be addressing first are, number one, the
22 proposed order erred in its determination to improve

1 an across-the-board allocation methodology and, two,
2 why the Commission should adopt Commonwealth
3 Edison's proposed rate design and its rate
4 mitigation proposal.

5 However, before I get into the
6 specifics of each of those issues, I would like to
7 note the following: Cost of service, revenue
8 allocation, rate design, each of these issues are
9 revenue neutral, Com Ed.

10 What you have before you ultimately on
11 these series of issues are two options: Option one,
12 setting rates based on cost of service; option two,
13 setting rates not based on cost of service through
14 an across-the-board allocation methodology.

15 In the end, whatever option you choose,
16 Commission, Com Ed will separate for the opportunity
17 to recover its Commission-approved revenue
18 requirement; indeed, in a tug of war between a rate
19 class, Com Ed is neutral. It stands neither to win,
20 nor lose, as a result of the resolutions of that
21 struggle.

22 With that in mind, let's turn to the

1 first issue. Why is the proposed order adoption
2 across-the-board allocation method inappropriate?
3 There's three reasons: First, it inappropriately
4 rejects Com Ed's E-cost as a basis for then going to
5 the across-the-board methodology. I'll address that
6 later.

7 Second, it moves away from the
8 Commission's long-standing policy to set rates based
9 on cost. Indeed, the Commission staff in its
10 initial brief admits to that point.

11 Third, the methodology exacerbates the
12 existing subsidiaries and, indeed, creates new
13 subsidies.

14 Why is that problematic? Well, it will
15 make it more difficult for this Commission in future
16 rate cases to move these rates closer to cost.

17 Let me give you an example. At present
18 Com Ed's 81 largest customers currently pay rates
19 that only recover 44 percent of their cost of
20 service. If the Commission adopts an
21 across-the-board methodology in this proceeding,
22 that will only serve to reduce the percentage of

1 cost recovery for those rates, thus, moving these
2 customers closer to cost in future rate cases will
3 even be more difficult.

4 Now these 81 customers, for example,
5 IIEC members, Abbott Laboratories, Caterpillar,
6 Exxon-Mobil, REACT members, PVV Midwest Refining,
7 United Airlines, they're not paying the other 56
8 percent of their cost of service, so who is? It's
9 the small and mid-level, non-residential customer,
10 the small businesses, the not-for-profit
11 organizations, stores that are, in fact, bearing the
12 burden of subsidizing that 56 percent.

13 In the end, Com Ed is going to recover
14 its rates, as I noted at the outset, however, we
15 believe it's inappropriate for the Commission and,
16 indeed, for regulatory policy to not only continue
17 this level of subsidy but, indeed, increase it by
18 virtue of going with an across-the-board allocation
19 methodology.

20 Instead, I will turn to point number
21 two. Com Ed's urges the Commission to adopt its
22 rate design proposal and its rate mitigation plan.

1 Why? Com Ed's goal in this proceeding was to
2 reasonably apportion costs using the
3 Commission-preferred embedded cost methodology
4 approach and to minimize subsidies, thus, Com Ed,
5 indeed, prepared and presented an E-cost and
6 submitted rates that moved rates towards costs.

7 In short, the company presented to the
8 Commission rates based on costs consistent with the
9 Commission's long-standing policy to set rates based
10 on cost-causation principles.

11 Com Ed did not pick winners or losers
12 with regard to the customers, rather it proposes
13 rates that fully and fairly allocate the greatest
14 extent possible in this proceeding cost recovery to
15 the various customer classes.

16 Rates are based on E-costs and E-costs
17 which is substantially similar to the three prior
18 E-costs that this Commission has approved and which
19 staff has endorsed, and, in fact, in this proceeding
20 staff again has no objection to the company's
21 E-costs.

22 Now Com Ed, in fact, considered a rate

1 impasse. It considered a rate impasse for all
2 customers. In so doing its proposal, Com Ed has
3 developed a mitigation plan for the 81 customers I
4 have previously described. This rate mitigation
5 plan seeks to move those customers halfway closer to
6 their cost of service.

7 Now you may ask why not a hundred
8 percent. Well, the reason is simple. There are
9 subsidies that are currently in place today making
10 it very difficult for Com Ed to propose a full and
11 complete moving-forward cost and, thus, not
12 proposing that midway. Why?

13 COMMISSIONER O'CONNELL-DIAZ: Mr. Rooney, would
14 that result in rate shock? Is that the point you
15 are trying to make?

16 MR. ROONEY: We recognize that there may be
17 significant impacts, Commissioner, to a full and
18 complete movement, so that's why we propose halfway
19 in this proceeding.

20 Now why is that reasonable? Two
21 reasons: One, it moves these customers closer to
22 costs; two, it begins to reduce the subsidy burden

1 that these other smaller and mid-sized
2 non-residential customers are facing.

3 Now, as I mentioned before, intervenors
4 were presented classic tug of war here shortly
5 between the customer classes on rate issues. Many
6 of these parties seek to shift costs away from their
7 customer class on to other customers. Several
8 examples of this include City of Chicago's A and P
9 proposal for E-cost average and peak method.

10 The CTA and Metra they're explicit in
11 their desire to continue to have rate subsidies and
12 other customers bear those costs; meanwhile, IIEC,
13 REACT, DOE, each seek to avoid cost-based rates and
14 maintain subsidies claiming infirmities in the
15 E-cost. Their criticisms of the study, however, are
16 self-serving, and unavailing, and they should not be
17 accepted. The intervenors here identified specific
18 refinements to the cost study but these refinements
19 don't get them very far.

20 The record shows that if you take Com
21 Ed's cost study and incorporate their own estimates
22 of the impacts without the MDS, minimum distribution

1 service, proposal -- proposed order properly
2 rejected, the rates for these customers remain far
3 below costs; indeed, they're so far below cost that
4 even with the mitigated rate increases that Com Ed
5 has proposed, their rates will not fully recover
6 their cost of service.

7 In the end, it is critical for all
8 parties to have predictability and consistency in
9 the rate-setting process. In this way Com Ed,
10 staff, and consumers all understand the framework by
11 which revenues will be allocated among customer
12 classes and the resulting rates will be set both now
13 and in the future.

14 To that end, Com Ed urges the
15 Commission to approve its E-cost finding it valid
16 for setting rates and, two, adopt this proposed rate
17 design and rate mitigation proposal.

18 Thank you and I'm available for
19 questions.

20 CHAIRMAN BOX: Mr. Rooney, tell me how these cost
21 subsidies start and why were they not eliminated in
22 the past?

1 MR. ROONEY: Excellent question, Mr. Chairman.
2 They have evolved over a period of several years
3 several rates cases. In the last rate case, for
4 example, the Commission determined that it was going
5 to give, for lack of a better term, a break to the
6 CTA and Metra in recognition of public interest
7 issues, so they directed the company to provide them
8 below cost rates; meanwhile, the Commission also
9 decided in the last rate case to adjust the rates
10 for 79 of the large customers which resulted in
11 below cost rates, so it's been a series of years
12 where this has come to pass, and what we're seeking
13 here today is just to move them halfway, not
14 entirely all the way to full cost recovery.

15 CHAIRMAN BOX: There was ever a time these cross
16 subsidies were reversed?

17 MR. ROONEY: Was there a reversal cross-subsidy
18 back in the days when you -- before deregulation,
19 Mr. Chairman, where you had bundled rates and there
20 was argument that the large customers were
21 subsidizing residentials, but since the development
22 of distribution rates, it's really been subsidies

1 that have trended to go towards the large
2 industrials being borne by the -- being borne by the
3 smaller and mid-sized non-residential customer
4 classes.

5 COMMISSIONER O'CONNELL-DIAZ: Mr. Rooney, you
6 referred to the last rate case. Was there anything
7 in the order that would have required the company to
8 file a different type of cost-of-service subsidy or
9 anything of that nature?

10 MR. ROONEY: No. No, Commissioner. In fact, in
11 the last rate case on one of the issues IIEC had a
12 proposal with regard to the minimum distribution
13 system which the Commission rejected, then they're
14 arguing that the company should be required to file
15 that in this case, and the Commission rejected that,
16 and with regard to the CTA and Metra there was no
17 directive that the company should be required to
18 present rates in its next rate case that would
19 perpetuate the subsidies that they were getting as a
20 result of that.

21 MR. BOX: Thank you, Mr. Rooney.

22 MR. ROONEY: Thank you.

1 CHAIRMAN BOX: Next will be the staff of the
2 Illinois Commerce Commission.

3 I have been told somebody likes the
4 Olympic scoring.

5 COMMISSIONER O'CONNELL-DIAZ: I'll wait. I'm
6 waiting for people that are under age.

7 (Witness sworn.)

8 CHAIRMAN BOX: Not from this group.

9 COMMISSIONER FORD: Speak for yourself.

10 CHAIRMAN BOX: Mr. Feeley.

11 ORAL ARGUMENT

12 BY

13 MR. FEELEY:

14 Good afternoon, Chairman,
15 Commissioners. My name is John Feeley and I
16 represent the staff. I will discuss the first two
17 issues of cost-of-service allocation issues, more
18 specifically staff's across-the-board increase
19 proposal, and the accumulated provisions for
20 depreciation and amortization issues.

21 My co-counsel, Mr. Fosco, will address
22 the third and fourth issue of Rider SMP and

1 underground cables and services.

2 To the extent that you have questions
3 on any other issues, myself, Mr. Fosco, and our
4 other co-counsel, Mr. Borovik, will be available to
5 answer your questions.

6 Staff supports the proposed order
7 conclusions that the fairest allocation of rates in
8 this case is based upon the across-the-board
9 increase.

10 You should adopt the proposed order
11 recommendation to increase existing revenues and
12 rates by an equal percentage across-the-board basis
13 rather than according to the cost-of-service study
14 as the company and some other parties propose.
15 Com Ed and certain other parties' argument against
16 the across-the-board proposal all fail to account
17 for the unique and difficult circumstances electric
18 ratepayers now in Illinois are facing today.

19 Com Ed customers have already had to
20 endure some significant increases and the company
21 seems to indicate that further requests for
22 increases can be expected in the future in an

1 ongoing and more frequent basis.

2 Com Ed recently completed a
3 transmission rate case that included an increase of
4 93 million in transition revenue requirements.
5 Power costs for bundled customers increased on June
6 1st of this year with average billing increase for
7 residential customers estimated by Com Ed to be 2.5
8 percent and in this docket under the proposed
9 orders, proposed revenues billed would increase by
10 approximately 12 percent.

11 Finally, Com Ed was required to
12 mitigate the impact of its recent rate increase by
13 rebating approximately 500 million to common
14 ratepayers, and less than a year ago this Commission
15 issued its final order in Docket 07-0166 in an
16 investigation of Com Ed's rates to address concerns
17 raised by Com Ed's customers to the Illinois General
18 Assembly.

19 All of this leads staff to conclude
20 that bill impacts are an overriding concern for the
21 company, the Commission, and ratepayers.

22 It's staff's position that the most

1 reasonable approach to address these concerns is
2 with an equal percentage across-the-board increase
3 on existing rate elements. That approach recognizes
4 that Com Ed's customers have been financially
5 stressed by significant increases in electricity
6 costs; therefore, staff finds this method to be most
7 equitable under the current circumstances.

8 If the Commission were to revise the
9 rates set in Docket 07-0166 less than a year after
10 they were set, that would be confusing to ratepayers
11 who are facing further bill increases as a result of
12 this case.

13 These difficult economic times the
14 ratepayers find themselves in necessitate the
15 adoption of staff's across-the-board proposal in
16 order to prevent disproportionate increases and
17 already financially strapped ratepayers.

18 One final point that I want to clarify
19 is that staff's support for the across-the-board
20 increase is not based upon alleged shortcomings that
21 IIEC and others have raised in Com Ed's
22 cost-of-service study. In particular, staff

1 disagrees with the IIEC that the study should have
2 included the minimum distribution system.

3 It's staff's position that the minimum
4 distribution system improperly allocates costs on a
5 customer basis -- on a customer distribution -- on a
6 customer basis distribution level, costs that are
7 appropriately considered demand-related. The
8 Commission over the years has rejected the minimum
9 distribution system. Thank you.

10 CHAIRMAN BOX: Mr. Feeley, I just have one
11 question. Do you agree that small businesses and
12 mid-sized businesses are subsidizing the larger
13 users for the record?

14 MR. FEELEY: Sure, but if you don't do
15 across-the-board and you move to the cost-of-service
16 system, you are going to have disproportionate
17 increases on other ratepayers, and just given the
18 current financial times, the stress that all
19 ratepayers are under, I think it's best -- in their
20 best interest to just do the increase
21 across-the-board, and we're not saying that this
22 should continue for infinite, but, just given these

1 circumstances and these times, in this case you
2 should go with the across-the-board proposal
3 increase.

4 COMMISSIONER O'CONNELL-DIAZ: Mr. Feeley, doesn't
5 the rate mitigation plan assist those customers that
6 are now what I call "on the gravy train" to, in
7 fact, pay their fair share of what these costs are?

8 MR. FEELEY: If you go that way, the increases
9 are going to be disproportionate. Some people are
10 going to pay huge increases and others are going to
11 pay -- they're not going to see increases, and the
12 fairest way is just to increase everyone's rate by
13 whatever the overall increases are.

14 COMMISSIONER O'CONNELL-DIAZ: How does that move
15 us towards the guidance principle of cost-causation?
16 How does that get us to that?

17 MR. FEELEY: Given these times, you have to put
18 that aside. You can move that perhaps in the next
19 case, but just given these -- the conditions that
20 ratepayers are all under, the fairest thing in
21 staff's opinion is to do the across-the-board
22 proposal.

1 COMMISSIONER O'CONNELL-DIAZ: How is that fair to
2 the one that's paying for the one that's being
3 subsidized?

4 MR. FEELEY: How is that fair? Well, I guess a
5 response would be how is it fair for someone to
6 suddenly pay something that is going to double or
7 triple, and that's not going to happen if you go to
8 the across-the-board proposal.

9 COMMISSIONER O'CONNELL-DIAZ: How would we get
10 past that and moving there to the actual costs? How
11 do we get there?

12 MR. FEELEY: You are not getting there in this
13 case. You can address that perhaps in the next
14 case, but given the circumstances that exist now,
15 the across-the-board proposal is the fairest
16 alternative.

17 COMMISSIONER FORD: But it still shifts the money
18 from the large -- non-residential to the
19 residential. Is that fair? Tens of millions of
20 dollars would be shifted from non-residential to
21 residential customers, and I'm looking -- I'm sorry
22 -- to small customers, and I'm looking at the

1 mid-people.

2 MR. FEELEY: But, again, people know if you can
3 go with the across-the-board you know it's going to
4 go up by a certain percent. If you go with the
5 cost-of-service study, some people are going to go
6 way up and other people are going to go way down.
7 Across-the-board treats the increase equally and
8 that's the fairest given the times that we're under.

9 COMMISSIONER O'CONNELL-DIAZ: I guess it depends
10 on which side of the blanket you are on. If you are
11 subsidizing or you are not subsidizing, then I guess
12 the fairness issue is that's how you would determine
13 that.

14 MR. FEELEY: I don't -- well, I guess I have
15 responded to that.

16 CHAIRMAN BOX: Any other questions?

17 (No response.)

18 Thank you, Mr. Feeley.

19 MR. FEELEY: Thank you.

20 CHAIRMAN BOX: Next is the Attorney General Elias
21 Mossos.

22

1 ORAL ARGUMENT

2 BY

3 MR. MOSSOS:

4 Good afternoon. My name is Elias
5 Mossos on behalf of the People of the State of
6 Illinois and I would like to address three issues:
7 First is the rejection of Com Ed's cost-of-service
8 study; second is the IIEC's primary/secondary split,
9 and if we still have time, the IIEC/MDS proposal.

10 First, as everybody knows, cost of
11 service is a zero-sum game. Rates should be
12 cost-based ideally, but the only way to do that is
13 to rely on a valid cost-of-service study. Without a
14 valid cost-of-service study, there is no basis so
15 there's no debit. One class of customers there is a
16 higher or lower increase over another class. In
17 this case the ALJ found and many intervenors' argue
18 that the cost-of-service study was flawed.

19 If you do find that the cost-of-service
20 study is deficient, then the rate should be modified
21 by the same percentage increase across-the-board for
22 all customer classes.

1 While the deficiencies that many
2 intervenors raise in this case affect allocations
3 among non-residential customers, these deficiencies
4 affect all customer classes because Com Ed's
5 cost-of-service study do not allocate costs between
6 residential to non-residential customers and divide
7 them further, instead Com Ed's study allocates costs
8 over all customers simultaneously.

9 For instance, when IIEC modified Com
10 Ed's cost-of-service study, the result was an
11 increase in non-heating residential class with a
12 simultaneous decrease to the heating residential
13 class even though they use more electricity, so
14 without a valid cost-of-service study, all customer
15 classes should receive the same percentage increase.

16 Second, IIEC tries to separate the cost
17 from the primary to secondary lines. IIEC's
18 analysis, because it contains a serious analytical
19 flaw on IIEC Exhibit 3.2, the number of feet of
20 primary and secondary wires and cables that Com Ed
21 installed between 2002 and 2006, is depicted.

22 IIEC assumes that each foot of wire and

1 cable had the same size, regardless of its function,
2 and, in fact, larger and heavier wire contains more
3 metal and can be more expensive to purchase.

4 We submitted evidence showing that some
5 of the wire and cable relied on by IIEC in this
6 analysis can be 20 to 30 percent heavier than they
7 anticipated making it that much more expensive.

8 IIEC also claims that certain costs are
9 associated with this primary/secondary split, such
10 as higher costs for poles and cross arms for the
11 primary system; however, none of these costs are
12 included anywhere in their analysis, and for this
13 reason we urge you to reject their proposal.

14 Third, we take issue with the minimum
15 distribution system proposed by IIEC. While the ALJ
16 held that the MDS request is basically moot since
17 the cost-of-service study is rejected, we would like
18 to point out some of the flaws in IIEC's request.

19 As everyone knows, this Commission has
20 rejected MDS for decades. IIEC says that they now
21 have real evidence to prove that the MDS exist.
22 This evidence is nothing more than the National

1 Electric Safety Code Minimum Standards, which IIEC
2 states are entirely customer-related with any
3 additional costs being demand-related.

4 So the problem is that these NES
5 standards are not based on the number of customers
6 but on many other factors, such as the expected
7 electricity consumption, topography, population
8 density, building, et cetera.

9 Oddly enough, IIEC does not even use
10 these minimum standards to conduct the proper
11 analysis that applies to Com Ed, instead they
12 analyze estimated customer-demand percentages from
13 utilities in Missouri, Kansas, Colorado, and
14 Montana, and, as our evidence in the record shows,
15 these utilities bear no similarities to Com Ed or
16 Com Ed's service territory and they should not be
17 used as proxies.

18 So, for those reasons, MDS should be
19 rejected, and I thank you for your attention.

20 CHAIRMAN BOX: Mr. Mossos, did the Attorney
21 General's Office challenge the cost-of-service study
22 in the last rate case of Commonwealth Edison?

1 MR. MOSSOS: In the last rate case I do not
2 recall if we did. It wasn't part of this. It
3 wasn't mentioned in this record.

4 CHAIRMAN BOX: You want to check with your
5 office. Is the same cost-of-service study we're
6 dealing with this case I think we dealt in the '05
7 case?

8 MR. MOSSOS: Yes, we did, but we rejected
9 Com Ed's proposal to lump all residential classes
10 into one class instead of the four I believe it is
11 now.

12 CHAIRMAN BOX: What we are talking about today
13 was considered flawed.

14 MR. MOSSOS: I don't believe it was and, even in
15 this case, we do not take a position one way or
16 another on the validity of the study.

17 Our problem is that if the Commission
18 finds that the cost-of-service study is deficient,
19 as it applies to the non-residential classes, then
20 that deficiency spills over to the residential class
21 so it should be rejected across the board. There's
22 no reason to conclude that it's defective for the

1 non-residential classes but the cost-of-service
2 study is valid for the residential class.

3 COMMISSIONER O'CONNELL-DIAZ: So, Counsel, what
4 you are saying what we do in one area affects the
5 total picture?

6 MR. MOSSOS: Correct, and that's what we saw in
7 the IIEC example.

8 COMMISSIONER O'CONNELL-DIAZ: And, Counsel, you
9 mentioned prior Commission precedence with regard to
10 this issue. Is it your position that we should
11 recognize prior precedence with regard to rejection
12 of the arguments that have been raised and you
13 suggested are deficient?

14 MR. MOSSOS: In regard to the MDS proposal?

15 COMMISSIONER O'CONNELL-DIAZ: Yes.

16 MR. MOSSOS: We agree as far as MDS is affected,
17 yes, because nothing's been submitted thus far.

18 CHAIRMAN BOX: Just going back to Mr. Rooney's
19 argument earlier, do you think that based upon what
20 you see in the record that the larger customers are
21 being subsidized by the smaller customers, and, if
22 so, should that not be corrected?

1 ORAL ARGUMENT

2 BY

3 MR. JOLLY:

4 Good afternoon, Chairman Box,
5 Commissioners. My name is Ron Jolly. I am an
6 attorney representing the City of Chicago in this
7 matter. My remarks today will be limited to the
8 proposed order conclusions concerning Com Ed's
9 cost-of-service study.

10 In particular, the city supports the
11 proposed order's finding that the cost study is
12 flawed in several important respects. No party
13 disputes that a fundamental precept of cost of
14 service and rate design is that costs should be
15 traced to cost-causers.

16 Indeed, Mr. Rooney described Com Ed's
17 support in his remarks today. However, the record
18 shows that support of the concept for Com Ed appears
19 to be a bit slippery because there are instances,
20 the record shows, where Com Ed's support for tracing
21 case to cost-causers is not so sacrosanct if it --
22 if doing so would cause too much inconvenience for

1 the company.

2 In particular, one example of Com Ed's
3 wavering loyalty to cost-causation concerns the
4 city's street lighting account. City witness
5 Ed Bodmer testified that Com Ed's cost study has
6 failed to account for significant cost differences
7 in serving city street lights versus serving the
8 street lighting in municipalities. Mr. Bodmer
9 pointed out that the city owns the poles, the
10 secondary wire, and other components of its street
11 lights.

12 Com Ed's cost study, however, ignores
13 these important facts and assumes that Com Ed
14 provides those components to the city. The proposed
15 order agrees with the city and finds that 75 percent
16 of the city's street lights are attached to
17 city-owned poles.

18 The proposed order continues finding
19 that Com Ed should be required to conduct an audit
20 of the city street lights before its next rate case.

21 In its brief on exceptions, except
22 after paying lip service to its claim that the

1 proposed order is wrong on the facts, Com Ed
2 ultimately states that even if the city and the
3 proposed order are right, that does not mean the
4 Commission should reject its cost study. Apparently
5 Com Ed is cavalier when it comes to tracing cause to
6 causes in certain instances.

7 Although the utility concedes, albeit
8 impliedly, that its cost study is not perfect, it
9 argues that it should not be required to cure its
10 imperfections if it means too much work or cost too
11 much money.

12 Com Ed's laissez faire attitude has
13 real implications for real customers. In this case
14 if Com Ed's position is accepted, the city will be
15 required to subsidize other members of the
16 dusk-to-dawn street lighting class.

17 In a time where governments
18 across-the-board are facing seemingly
19 ever-increasing deficits, imposing unwarranted costs
20 on the city is unfair and is contrary to established
21 cost-causation principles, perhaps more salient
22 examples of Com Ed's apathy towards cost-causation

1 CHAIRMAN BOX: Next is the Illinois Industrial
2 Energy Consumers.

3 ORAL ARGUMENT

4 BY

5 MR. ROBERTSON:

6 May it please the Commission, I won't
7 introduce myself because our name's been mentioned
8 up here a couple of times and I don't have any gravy
9 on my tie, Commissioner.

10 (Laughter.)

11 I would like to mention that Mr. Rooney
12 and I probably don't agree or disagree too much
13 philosophically on the cost-of-service principles on
14 the case.

15 Our position is that the company's
16 study is flawed and shouldn't be used for revenue
17 allocation and rate design. We presented some
18 alternatives people didn't like here. You heard
19 some of the criticisms of the alternatives that we
20 presented which means that there's no valid study on
21 the record. Under that circumstance, it seems to me
22 the Commission has no choice but to do an

1 across-the-board increase in the absence of a valid
2 study.

3 So cost of service is a basic and
4 fundamental rate-making principle. Cost-causation
5 is a principle to be recognized in all cost studies.
6 Cost of service study for Commonwealth Edison had
7 three objectives. The first was to allocate rates
8 based on costs. The second was to come as close as
9 possible to the cost studies as far as format is
10 concerned that they had presented in the past, and
11 the third was to rely on their booked costs as much
12 as they could.

13 Of those three principles, their
14 witness said the most important was allocation of
15 costs according to cost-causation. All right.
16 Unfortunately, Com Ed's study does not meet that
17 principle. It does not allocate costs on the basis
18 of cost-causation. Why is that? It's because the
19 company does not recognize the secondary/primary
20 split that you have heard talked about here today,
21 and, as a result, it allocates costs of the system
22 to customers who don't use it.

1 There are customers on the system who
2 do not use the secondary system. They use only the
3 primary system, and under Com Ed's approach they
4 allocate secondary costs to these customers.
5 Nobody, nobody disputes that that is, in fact, the
6 case, not even the company's witness who testified
7 in cross-examination that was, in fact, the case.

8 Now what does that mean? It means by
9 definition the company has misallocated a
10 substantial portion of the distribution system based
11 on its failure to include the primary/secondary
12 split. If you have misallocated a substantial
13 portion of the system, it is difficult to say that a
14 customer group is subsidizing another customer group
15 in the absence of a proper allocation which does not
16 exist in this case.

17 Now the company has argued that with
18 regard to -- now there were other flaws in the
19 company's study as well. One was the failure to
20 recognize a substantial portion of the distribution
21 system is customer-related. It's been called the
22 minimum distribution system. The other is that the

1 company's study produced analogous and illogical
2 results.

3 Now those results in the original study
4 produced rates that had distribution facilities'
5 charges for high-voltage customers that are less
6 costly to serve and lower rates for
7 low-voltage customers who are more costly to serve.
8 The company had flipped the rate relationships that
9 had been present in those cases for many, many
10 years.

11 The study also produced rates for large
12 delivery service customers which were substantially
13 in excess of those for other Illinois utilities.

14 Ameren-Illinois had rates which are
15 similar somewhat to Commonwealth Edison's rates.
16 Our witness did an analysis to compare Ameren's
17 rates for similar-sized customers to Commonwealth
18 Edison's rates for similar-sized customers and found
19 that there was a significant difference, and,
20 however, the per unit cost-of-delivery service for
21 Ameren and Com Ed are within the same range, so we
22 have a per unit cost-of-delivery service for two

1 utilities that is approximately close together and
2 then we have rates for that delivery service for the
3 same size customers which are greatly apart.

4 So we thought there's something not
5 right here. There's something wrong with this
6 study, and we also noticed that the company's
7 proposal produced increases in revenue
8 responsibility of 225 percent for some customers,
9 and these were the 10 megawatt customers served at
10 standard voltage.

11 When the company made some adjustments
12 in its rebuttal case in this case to reflect some of
13 the criticisms that had been made of the study, not
14 all of them, just some of them, that for that rate
15 class their increase went down to 142 percent, a
16 change of 100 percentage points for just a
17 relatively small change in the company's
18 cost-of-service study. Something is not right.

19 Now, in addition, the company -- as I
20 stated already, everybody agreed that
21 secondary/primary split is something the company
22 didn't do, and I think everybody's pretty much in

1 agreement as a result there are costs allocated on
2 the system to customers who do not use it.

3 COMMISSIONER FORD: Mr. Rooney in their
4 mitigation plan didn't they propose they would
5 adjust for any economic impact resulting from the
6 primary and secondary split?

7 MR. ROBERTSON: The mitigation proposal takes
8 rates to 50 percent of the cost in the first step,
9 and they claim that those rates were lower than the
10 rates that might be accomplished if you did a
11 secondary/primary split as we propose it. They
12 don't like our method. Nobody likes our method.
13 The ALJ doesn't like our method for doing that, so
14 who knows what's right here, except they didn't do
15 the primary/secondary split.

16 Okay. And I'm losing track of the
17 question.

18 The answer to the question is only in
19 the first year at the first stage, is that the case?
20 That's not the case when you do a full rate
21 increase, so we didn't think that that addressed our
22 concern and it doesn't address the concern of the

1 fact that there's \$920 million of distribution
2 facility costs that Commonwealth Edison has out of a
3 \$2 billion revenue requirement that is misallocated
4 in some respects because it doesn't distinguish
5 between the primary and secondary system.

6 COMMISSIONER O'CONNELL-DIAZ: How many affected
7 customers are we talking about?

8 MR. ROBERTSON: How many what?

9 COMMISSIONER O'CONNELL-DIAZ: Affected customers.

10 MR. ROBERTSON: I don't know the number.
11 Mr. Rooney mentioned a figure of 81 I think.

12 Go ahead, Mr. Rooney.

13 MR. ROONEY: In terms of --

14 COMMISSIONER O'CONNELL-DIAZ: Primary/secondary
15 split.

16 MR. ROONEY: -- primary/secondary split? Well,
17 in terms of the propensity 81 customers, I don't
18 know the breakdown within that.

19 MR. ROBERTSON: It's less than a percent of their
20 total number of customers.

21 MR. ROONEY: That's correct.

22 MR. ROBERTSON: And they may make that point, but

1 that's the wrong point, too, and it's the wrong
2 point, too, because those customers represent
3 one-fifth, one-fifth of the Commonwealth Edison
4 electrical load. That has a significant impact on
5 the economy of the State of Illinois and they are
6 treating in that comment a large industrial customer
7 that may use hundreds and thousands of
8 kilowatt-hours or hundreds of megawatts the same as
9 you would a small tiny customer who's heating or
10 using electricity to heat their summer cottage.
11 It's not a good comparison. The better comparison
12 is what percentage of load is represented here.
13 It's a significant percentage.

14 Now we also mentioned the minimum
15 distribution system. It is true -- it is true that
16 the Commission has never accepted, and I'm always
17 hopeful, a minimum distribution system, and,
18 however, just to make it clear, this is not
19 something we came up with on our own. You invited
20 the minimum distribution system to be addressed in
21 your last rate order in a Commonwealth Edison case.
22 You invited us or other parties to do it.

1 We went out and hired a fellow who used
2 to work for Aquilla (phonetic) that has done these
3 studies based on the actual National Electrical
4 Safety Code and he took a look at what was going on.
5 He's done them for other utilities. His proposal
6 had been accepted by other commissions and it's a
7 little bit different than the hypothetical things we
8 have been dealing with here in Illinois in the past.
9 This is more of a realistic thing.

10 The customer component is identified
11 because the distribution system must meet the code.
12 The cost of meeting the code does not vary with
13 demand. The cost of meeting the code varies with
14 customers, and we put on extensive testimony about
15 why that is true. The cost of meeting the code can
16 be distinguished from the cost of meeting the demand
17 and we put on extensive testimony about that. The
18 cost of meeting the code is the cost of meeting the
19 minimum distribution system needed to serve
20 customers.

21 Now the Attorney General has said
22 gee-whiz there are all these other things that

1 affect the code. For electric allocation,
2 cost-of-service study, there's three principle means
3 for allocation: Demand, electricity, and energy.

4 The whole system is a function of a lot
5 of other things, the hydrogen coal, you know, how
6 far does it go in the ground, the size of the wire,
7 and all that other stuff that's affected by
8 different things, but when you go to the final step,
9 it's either energy customer or demand, and in the
10 case of the distribution system, it is customer and
11 demand only according to the NARUC manual cited by
12 Kroger in its brief.

13 Now Com Ed defends its study in several
14 respects. It says that it's consistent with past
15 practice. I think you asked a question about this,
16 Commissioner. Except for the original study
17 presented in the very first delivery service case in
18 Docket 99-0117, Commonwealth Edison studies have not
19 been used for allocation of revenues for rate
20 classes within a non-residential class since 1999.

21 Secondly, in that 1990 case you only
22 set the rates for the non-residential customers

1 because they were the only ones eligible for
2 delivery service under the statute as it existed at
3 that time in October 1999, and there was a different
4 rate structure.

5 Commonwealth Edison was a
6 fully-integrated utility. The residentials weren't
7 going to deliver service. There were a whole lot of
8 issues there. The cost-of-service study was not the
9 major issue in the case because, quite frankly,
10 residentials weren't involved, so we didn't need a
11 lot of big discussion like some of the discussions
12 we had today about the impact of residential.

13 So then in 01-0423 the company and the
14 Commission rejected the use of the company's study
15 for allocation within the residential class, and the
16 Commission, and the company, and IIEC went along
17 with the across-the-board increase within the
18 residential class, so there's some precedence for
19 across-the-board if you just determine there's no
20 valid study in the record here upon which to base
21 rates.

22 Secondly, in the last docket we

1 objected to their study vociferously, and they -- I
2 don't want to say they didn't present but modified a
3 service study in the surrebuttal portion of the case
4 which nobody got a chance to reply to.

5 So even with that, in your order in
6 that docket you found that you were persuaded that
7 it was less costly to serve the -- let me get this
8 right. I think I got it wrong -- that it was less
9 costly to serve very large load customers than it
10 was to serve the smaller load customers.

11 All right. So you, yourselves, have
12 not used this study fully. Yes, you have used it
13 for allocation of the revenue responsibilities
14 between the residential and non-residential at a
15 very high level, but within the non-residential
16 class, you really haven't used it for very much of
17 anything since that very first case.

18 My time is up. I will be happy to
19 answer questions. I have got three more pages of
20 argument if you want to hear it, but I don't think
21 anybody behind me does.

22 (Laughter.)

1 ORAL ARGUMENT

2 BY

3 MR. TOWNSEND:

4 Good afternoon. Christopher J.
5 Townsend on behalf of the Coalition to Request
6 Equitable Allocation of Costs Together, or REACT.

7 REACT brings together some of the
8 largest and most prominent users of electricity in
9 Northern Illinois. Along with retail electric
10 suppliers, they're interested in providing service
11 to residential customers in Com Ed's service area.

12 Together this diverse group reacted to
13 Com Ed's proposed allocation of costs that
14 simultaneously would have, on the one hand, impose a
15 massive, unjustified rate increase upon Com Ed's
16 largest customers while at the same time, on the
17 other hand, imposing an artificial barrier to
18 competition for Com Ed's smallest customers.

19 With regard to these two fundamental
20 flaws, the proposed order properly concludes that
21 Com Ed's proposed allocation was improper and
22 inequitable. First Com Ed's improper allocation

1 would have resulted in a huge disproportionate rate
2 increase for its largest customers.

3 The proposed order properly concludes
4 that Com Ed's allocation methodology should not be
5 used and instead recommends an across-the-board
6 12.78 percent increase.

7 Com Ed's proposal would have increased
8 rates for its largest customers by over 100 percent
9 and imposing half of that increase in this rate case
10 and the other half in Com Ed's next rate case.

11 As Mr. Robertson explained, the basis
12 for Com Ed's proposed allocation of its costs to its
13 largest customer is unjustified. In fact, it
14 borders on absurd.

15 For things as simple as the number of
16 distribution poles, the amount of underground line,
17 the cost of tree-trimming, Com Ed's embedded
18 cost-of-service study assumes the cost to serve two
19 15 megawatt large industrial customers is identical
20 to the cost to serve 3,000 residential homes.

21 Far from shying away from their
22 responsibility to pay their fair share, the members

1 of REACT requested Com Ed to calculate the actual
2 cost to serve the 79 largest customers. Com Ed
3 refused -- Com Ed refused to even say how much it
4 would cost to perform that type of analysis.

5 The proposed order correctly concludes
6 that Com Ed's cost study is flawed. Recognizing
7 this problem and not having the actual data to serve
8 the largest customers and believing the testimony of
9 Com Ed's president that its current rates are fair
10 and that they do not contain any cross-subsidies,
11 the ALJs appropriately assigned an across-the-board
12 increase. REACT supports that conclusion.

13 The other way in which Com Ed
14 improperly allocated its costs dealt with the split
15 between its delivery services rates and its supply
16 rates. As you know, Com Ed continues to provide
17 both delivery services and supply services to its
18 residential customers.

19 Regardless of the fact that Com Ed
20 doesn't own generation any longer, it still procures
21 supply and it bills its customers for that supply as
22 well as the administrative costs associated with

1 supply. It's this supply rate against which retail
2 electric suppliers must compete.

3 In addition to administrative costs,
4 Com Ed also incurs both delivery services and
5 supply-related customer care costs.

6 Com Ed recognizes that it incurs costs,
7 including costs associated with providing
8 information regarding its rates, actually billing
9 the customers, addressing billing questions, and
10 resolving disputes.

11 Com Ed must program its computers in
12 order to build its supply rates. It must hire and
13 train people in order to be able to answer questions
14 regarding the supply charges that it charges, and it
15 must resolve billing disputes with regard to the
16 supply rates that it charges, but Com Ed has
17 proposed to recover all of its customer care costs
18 from its delivery services rates thereby
19 artificially increasing its delivery services rates
20 and reducing the supply rate against which RESEs
21 must compete.

22 REACT presented the expert testimony of

1 Jeffrey Marola who quantified the amount of customer
2 care costs that Com Ed improperly allocated.
3 Mr. Marola issued discovery asking Com Ed what the
4 actual supply-related customer care costs were that
5 they incurred.

6 Com Ed responded zero, zilch, nada,
7 nothing, that is although Com Ed admits that it
8 derives all of those supply-related customer care
9 services, it claims that it didn't incur any
10 supply-related customer care costs.

11 Mr. Marola investigated further and he
12 calculated the total amount of care costs that
13 Com Ed has incurred and he developed and applied an
14 allocation methodology. It resulted in a
15 conservative allocation of 40 percent of those costs
16 being assigned to the supply rates and 60 percent
17 remaining with the delivery services rates.

18 Mr. Marola then confirmed that this
19 treatment was similar to the way in which customer
20 care costs are addressed in other states where there
21 are competitive markets.

22 To the extent that you have any

1 questions regarding the methodology that Mr. Marola
2 used, Mr. Marola is here today by phone to be able
3 to assist in answering questions.

4 The proposed order agrees that Com Ed
5 did not properly allocate these costs but it fails
6 to take the next step to order Com Ed to reallocate
7 those costs now, so until this issue is resolved,
8 Com Ed's delivery services rates are going to be too
9 high and the supply rates against which RESES must
10 compete will be too low.

11 Respectfully, competitive suppliers
12 will be discouraged from entering the competitive
13 market for residential customers in Illinois.

14 REACT respectfully requests that the
15 Commission accept the course that the ALJ charted
16 for an across-the-board increase and order Com Ed to
17 stop blocking competition for residential customers.
18 Thank you.

19 CHAIRMAN BOX: Thank you, Mr. Townsend.

20 Any questions?

21 (No response.)

22 Thank you.

1 MR. TOWNSEND: Thank you.

2 CHAIRMAN BOX: Next is Building Operators and
3 Managers Association, Mr. Munson.

4 MR. MUNSON: I also have courtesy copies if
5 anybody needs a handout.

6 ORAL ARGUMENT

7 BY

8 MR. MUNSON:

9 Good afternoon. My name is Michael
10 Munson on behalf of Building Owners and Managers
11 Association of Chicago.

12 BOMA represents the interests of 270
13 commercial office buildings downtown. I think
14 there's a bit of a misconception of our customer
15 group, so it represents the interests of those 270
16 buildings and its 8,000 tenants, large and small
17 businesses, government entities, non-for-profits,
18 that are housed in those buildings and employing
19 240,000 people every day.

20 Those tenants, those businesses,
21 non-for-profit, pay a hundred percent of the
22 building costs and energy costs, over a third of

1 operating costs in the building, rising
2 precipitously just passed real estate taxes, and the
3 highest costs in the city.

4 Now because I have very little time,
5 I'm providing a visual. Why don't we look at some
6 of the facts before making a decision to mitigate.

7 This is a graph that we constructed
8 using Com Ed rates and profiles. Com Ed's published
9 rates and load profiles supplement Mr. Sharfman's
10 testimony, BOMA Exhibit 2, and adds in the graph a
11 little differently adding in the across-the-board
12 rate increase. This is since the inception of
13 deregulation in Illinois and shows what's really
14 happened here with the rate classes.

15 Now on the right-hand side on the
16 right-hand column are notations of rate classes.
17 Now they're the old-size classes instead of the
18 extra large load, large load, et cetera, and I'm out
19 of time. I suggest let's look at the long-term
20 impact before making any decision to impact rates.
21 Thanks.

22 CHAIRMAN BOX: Any questions of Mr. Munson?

1 (No response.)

2 Next we have Chicago Transit Authority
3 and Metra, Mr. Gower.

4 MR. GOWER: Yes, sir.

5 ORAL ARGUMENT

6 BY

7 MR. GOWER:

8 Good morning, Mr. Chairman,
9 Commissioners. My name is Ed Gower. I represent
10 Metra in this matter. Mr. Balough represents the
11 CTA. We have agreed to split up the issues and I
12 will be addressing the Commission on the
13 cost-of-allocation issues.

14 I want to address a couple points up
15 front. First of all, it is Metra and CTA's position
16 that they are not currently subsidized, that there
17 is no valid cost-of-service study, and that the
18 comments concerning the subsidies are overstated.

19 Second, we're probably the only honest
20 people in the room to say that if you are going to
21 subsidize somebody, it should be us and for good
22 policy reasons.

1 (Laughter.)

2 Metra provides inner-city rail service
3 for 83 million riders in over a 475-mile system.
4 The CTA provides mass transit and bus service for
5 \$430 million riders in Illinois through the City of
6 Chicago and through 40 suburbs.

7 The CTA purchases and Com Ed delivers
8 350 million kilowatt-hours annually to the CTA for
9 traction power to power the CTA rapid transit cars.
10 Metra purchases approximately a hundred million
11 kilowatt-hours annually to power its electric train
12 service district. They're both funded through a
13 combination of farebox revenues, sales tax, and
14 federal and state grants.

15 Both Metra and the CTA are operating
16 nemesis of the RTA. They both benefited from the
17 financial bail-out package passed by the General
18 Assembly and signed into law in January of this year
19 which averted a crisis in this area. Both Metra and
20 the CTA has historically had contracts with
21 Commonwealth Edison that govern all aspects of their
22 relationship, including rates.

1 The delivery services rate case in 2006
2 was the first case involving the setting of delivery
3 service rate case -- delivery service rates for the
4 railroad class that were actually used by either
5 entity.

6 The fact that there is a contract that
7 covers all aspects of the service benefits the CTA,
8 Metra, and Com Ed, because among others it allows
9 Com Ed to use Metra's and CTA's property and vice
10 versa. That is particularly attractive for Com Ed
11 because a number of its facilities are located on
12 CTA facilities throughout the city.

13 Now Com Ed's own witnesses -- I'm going
14 to give you examples of why it is that we think that
15 there's a problem -- a fundamental problem with Com
16 Ed's E-cost and that it existed for several rate
17 cases.

18 Com Ed's own witness acknowledged in
19 this proceeding that it cost less to serve large
20 customers who take service at higher voltages than
21 it does to serve smaller customers who take service
22 at lower voltages, and specifically the high voltage

1 was identified as being 12.5 kw which is what Com
2 Ed, and Metra, and CTA take.

3 In the last delivery service rate case
4 Com Ed's E-cost produced cost-of-service rates --
5 excuse me -- produced costs for Metra and the CTA
6 which peg their costs to serve those two large
7 entities at costs higher than every other
8 non-residential rate class, except for the small
9 load and the lot-hour (sic) classes. The same thing
10 happened in this case. No witness -- Commonwealth
11 Edison on its face seems inexplicable and, in fact,
12 it was inexplicable because no Commonwealth Edison
13 witness in either case attempted to explain or
14 justify that anomalous and peculiar result.

15 In the last rate case this Commission
16 entered an order in which it specifically identified
17 and discussed the public interest considerations
18 that it thought ought to be taken into account with
19 respect to the provision of public transportation in
20 the greater Chicago Metropolitan region and it
21 explicitly said it was taking those interests into
22 account in setting the rates and that to the extent

1 that created a subsidy it should be borne by other
2 non-residential rate-paying classes.

3 (Slide presentation.)

4 Richard, if you can go to the third
5 slide there. That's all right.

6 In the Peoples Gas case that was just
7 decided this Commission said that it really ought to
8 follow precedent where there's been no changes,
9 otherwise, it would appear to be arbitrary and
10 capricious, yet, when Commonwealth Edison prepared
11 its rate case in this proceeding, it did nothing to
12 address those public interest concerns. It also did
13 nothing to address this Commission's comments on
14 Page 196 of the prior order suggesting that IIEC
15 might have a valid point that Commonwealth Edison's
16 E-cost wasn't producing valid and reasonable rates
17 for larger industrial customers, instead
18 Commonwealth Edison used the same E-cost in this
19 proceeding. It produced the same results. They
20 proposed to raise the railroad's rates -- railroad
21 classes' rates by 521 percent.

22 There are, as you know, a number of

1 environmental benefits associated with the railroad
2 class and there was testimony introduced in this
3 case similar to what was introduced in the last case
4 that explains that.

5 For example, there's a chart you have
6 up there of Metra's director of planning testified
7 that the urban mobility report, which was prepared
8 by the very well-respected Texas Transportation
9 Institute, combined the contribution of Metra and
10 the other two providers of public transportation in
11 the Chicago area, and it concluded that Metra, the
12 CTA, and Pace help Chicago travelers avoid losing
13 39.6 million hours of transit time and \$779.4
14 million in costs.

15 Similarly, the CTA's director of
16 finance introduced testimony concerning a report
17 concerning the environmental benefits and energy
18 benefits associated with the use of public
19 transportation. It showed that per passenger mile
20 public transportation generates only 5 percent of
21 the carbon monoxide and only 8 percent of the
22 volatile organic compound, both of which are

1 problems in this area as compared to private
2 automobiles.

3 Now you heard a little bit from the
4 IIEC and you heard about several flaws, and we
5 frankly agree with the IIEC's analysis. We think
6 that Metra and the CTA with respect to the failure
7 to separate the primary and secondary voltage costs,
8 we think Metra and the CTA are being assessed costs
9 for a large part of the system that they don't
10 utilize.

11 We also agree frankly with the MDS
12 approach. It knows it's not favored, but if you go
13 back and look at the testimony of Com Edison's
14 president, he said one of the principle reasons
15 we're bringing this case is because we are expanding
16 out and we have to extend new facilities, and that
17 strikes me as something that's not a demand-related
18 cost as a customer-related cost and certainly
19 suggest that MDS ought to at least be considered.

20 I am going to wrap up very quickly
21 here.

22 CHAIRMAN BOX: Very quickly, please.

1 MR. GOWER: There are -- there's some
2 peculiarities about the Com Ed -- excuse me -- about
3 the Metra system and CTA system that I think can't
4 be addressed by the current E-costs because it's not
5 sufficiently refined.

6 For example, in the Metra system there
7 are two substations that are physically housed with
8 the Commonwealth Edison substation that feeds them,
9 that the cost of those two substations, which
10 account for 20 percent of the Metra system, is
11 assigned the same. Because they use standard cost
12 allocators, it's treated as if it has the same
13 distribution system that a supermarket does in the
14 western suburbs and it just makes no sense. Excuse
15 me. That's why we have asked the Commission direct
16 Commonwealth Edison in the next rate case to do a
17 specific cost identification study for the railroad
18 class and it's not a specific cost study for
19 individual members or for the substations but rather
20 would use cost allocation factors to try to set
21 better rates and more accurate rates for the
22 railroads.

1 If you have any questions, I would be
2 happy to answer them.

3 CHAIRMAN BOX: Any questions of Mr. Gower?

4 (No response.)

5 Thank you very much.

6 MR. GOWER: We don't consider ourselves to be on
7 the gravy train.

8 CHAIRMAN BOX: Kroger and the commercial group,
9 Mr. Boehm.

10 MR. BOEHM: Boehm.

11 CHAIRMAN BOX: Mr. Boehm. I'm sorry. You get an
12 extra 20 seconds.

13 (Laughter.)

14 Give that man more time.

15 ORAL ARGUMENT

16 BY

17 MR. BOEHM:

18 Good afternoon. Just a little bit of a
19 background. Counsel for the commercial group is out
20 of the country and I have agreed to read his
21 statement. His statement does not necessarily
22 reflect the views of Kroger. This is the commercial

1 group's statement.

2 The commercial group represents the
3 interests of 23,000 retail commercial customers of
4 Com Ed, a vital part of the Illinois economy. The
5 record shows that commercial customers have
6 subsidized other customer classes by one-third of a
7 billion dollars the last seven years and an
8 across-the-board increase would cause the subsidy to
9 grow even larger.

10 Of course, the other customer classes
11 are happy to see this subsidy continue, but just who
12 is hurt, not only commercial and small industrials
13 which together employ a large percentage of Illinois
14 citizens, but also schools, homeless shelters, and
15 churches. These are fellow members small to very
16 large load classes that have been subsidizing other
17 classes.

18 How is it fair for schools and churches
19 to subsidize other customers? Some representatives
20 of the three largest load classes argue Com Ed's
21 cost study should be thrown out, but if the cost
22 study were corrected as these customers suggest, the

1 subsidies from the large and very large load classes
2 would grow even larger; indeed, the Commission
3 should understand that every single cost study, the
4 evidence shows, the medium, large, and very large
5 load classes pay significantly more than cost.

6

7 The across-the-board increase then is
8 not about fairness or the accuracy of the cost
9 study. In fact, the ALJ in Com Ed's case proposed
10 an across-the-board increase because of an allegedly
11 flawed cost study while the ALJ in Ameren's case
12 likewise proposed an across-the-board increase where
13 no party challenges the cost study. The commercial
14 group urges the Commission to set rates based on
15 cost.

16 If the Commission does not want to go
17 all the way to cost, move halfway to cost as Com Ed
18 suggests. If the Commission wants to correct
19 Com Ed's cost study as representative of the largest
20 load classes suggest, set rates based on the IIEC's
21 primary/secondary study.

22 Make no mistake the across-the-board

1 increase is not mutual. It hurts schools, churches,
2 retailers, and small industrials. It must not be
3 adopted.

4 So that was the commercial group's
5 statement.

6 COMMISSIONER O'CONNELL-DIAZ: We can't ask you
7 questions?

8 MR. BOEHM: I can do my best.

9 COMMISSIONER FORD: It hurts schools?

10 MR. BOEHM: I do have an oral argument on behalf
11 of my client, Kroger.

12 ORAL ARGUMENT

13 BY

14 MR. BOEHM:

15 Good afternoon. My name is Kirk Boehm.
16 I am appearing on behalf of Kroger. I would like to
17 briefly discuss the ALJ's proposed order on the
18 issue of rate allocation. The ALJ has stated it is
19 just and reasonable to not pick winners and losers
20 in rate allocation, simply implement an equal rate
21 increase for all customer classes.

22 Kroger respectfully disagrees with

1 their recommendation. Across-the-board increase
2 does pick winners and losers. The winners are the
3 customers that are currently receiving subsidies
4 from other customer classes. Under the
5 across-the-board allocation, these customers will
6 continue to be subsidized.

7 The losers are the customers that are
8 currently subsidizing other customer classes. They
9 will continue to subsidize other customers without
10 any relief. The ALJ believes that doing nothing the
11 allocation of costs among customers does not pick
12 favorites is over-simplistic.

13 Kroger urges the Commission to review
14 the cost-of-service evidence and simply set rates as
15 close as possible to costs. This will insure that
16 each customer pays its own way. That's the best way
17 to insure that there are no longer losers,
18 specifically Kroger recommends the Commission
19 approve an alternative proposal recommended by
20 Commission staff. This proposal can be found in the
21 direct testimony of staff witness Mike Luth at Page
22 9 of his direct testimony.

1 As staff correctly concludes, once
2 customer-related costs are accounted for, the most
3 important cost distinction for delivery service
4 among non-residential customers is the voltage at
5 which the customers take service. This is a far
6 more important distinction than the customer size.
7 For customers of identical voltage and load usage
8 pattern, size is virtually irrelevant in the
9 compilation of cost-causation.

10 In order to remedy this problem, staff
11 proposes, through Mr. Luth's testimony, that the
12 Commission approve a common DFC for medium large,
13 very large, extra large and high-voltage customers
14 by averaging each class' increase under cost of
15 service. This would be set by averaging each class
16 of DFC based on cost of service.

17 Kroeger's support of this proposal is
18 fully explained in our brief on exceptions. The
19 Commission should reject the ALJ's recommendation to
20 preserve the inner-class subsidies contained in
21 current rates, equity demands, and move towards
22 cost-of-service for non-residential customers.

1 Thank you.

2 COMMISSIONER FORD: Thank you.

3 CHAIRMAN BOX: Any questions for Mr. Boehm on the
4 first argument by Mr. Boehm -- Boehm?

5 Any questions?

6 (No response.)

7 Okay. Thank you very much. We have
8 one more presenter from the Department of Energy.

9 ORAL ARGUMENT

10 BY

11 MR. BRUDER:

12 Let me say I'm not sure I can do it in
13 60 seconds. I'm positive I can do it in 90. This
14 is very, very brief, just a couple things.

15 First of all, I do want to mention
16 something that may be useful that hasn't been
17 mentioned and that is there are in the record two
18 separate proposals for mitigating the rate impacts
19 if the Commission does, indeed, accept this
20 cost-of-service study that is going to cause so much
21 controversy in DOEs in our initial brief at 14 and
22 16 and our reply brief at 9. The IIEC's is found in

1 their reply brief at Page 82.

2 Second thing, I just want to wrap up on
3 something and that is it's being referred to a
4 number of times smaller users, residential,
5 commercial, and so on, are hurt by these high rates
6 and some of them are suffering from high rates.

7 We hear this as we go around the
8 country, but what I think needs to be emphasized in
9 the context of the discussion of a cost-of-service
10 study is that the fact that small users are burdened
11 with rates that are higher than we all like does not
12 in any way, shape or form demonstrate that smaller
13 users are subsidizing large users.

14 To demonstrate that there are subsidies
15 of that nature or subsidies of any nature, we need a
16 valid cost-of-service study. Here we don't have a
17 valid cost-of-service study. Methodologically, it's
18 wrong. In terms of results, it's wrong. It hasn't
19 improved very much, and the situation is that the
20 Commission is being asked to accept an invalid
21 cost-of-service study as proof of the fact that
22 there are subsidies and then to adopt the study as a

1 way to cure the subsidies that -- the subsidies that
2 the cost-of-service study demonstrates are there.
3 It is a bootstrap argument. The study's wrong and
4 we don't know whether there are subsidies or not and
5 we ask this Commission please let's go back and
6 let's sit down together and get together a valid
7 cost-of-service study.

8 Let's see if there are subsidies.
9 Let's act upon them if there are, but first let's
10 see if they're there. Thank you very much.

11 CHAIRMAN BOX: Thank you.

12 Any questions for Mr. Bruder?

13 (No response.)

14 Thank you very much.

15 MR. BRUDER: Thank you.

16 CHAIRMAN BOX: I think Mr. Rooney is the only
17 one reserved time.

18 REBUTTAL

19 BY

20 MR. ROONEY:

21 Mr. Chairman, Commissioners, welcome to
22 the tug of war between the customer classes. I'm

1 going to try to respond in rebuttal here in the same
2 sequence as which the parties came.

3 Let me turn to staff and their argument
4 concerning using the across-the-board allocation
5 method. I only point to one statement that's found
6 in their brief and that's with regard to how long
7 they want to keep using the allocation method.

8 They would propose using the allocation
9 method for an indefinite period of time, quote,
10 until some degree of rate relief stability returns,
11 the design of Com Ed's rate should be based on bill
12 impacts rather than cost of service. Put another
13 way, we don't know how long staff's going to
14 continue to propose non-cost-based rates in the
15 future.

16 City of Chicago with regard to their
17 street lighting arguments, what Mr. Jolly didn't
18 state is that Mr. Bodmer neglected to reflect the
19 fact that Com Ed provides many of the poles in
20 alleyways and the miles and miles of wire that go
21 into the city street lighting; indeed, the evidence
22 demonstrates that Com Ed, in fact, properly

1 accounted for the city's street lighting costs as
2 reflected in the cost study.

3 With regard to IIEC --

4 COMMISSIONER FORD: Mr. Rooney, so, in other
5 words, when my street lights go out in my alley, I
6 have to call the city -- that was referenced to what
7 Mr. Jolly said -- and you are saying that when it
8 goes out I should call you all?

9 MR. ROONEY: The poles are provided. The city
10 puts the arm on.

11 COMMISSIONER FORD: I know.

12 MR. ROONEY: You are correct in terms of costs.
13 It's not as if Com Ed has no costs in providing
14 street lighting service to the city.

15 With regard to IIEC simply saying that
16 we don't agree amongst ourselves what is a valid
17 cost study does not mean the Commission should adopt
18 no cost study.

19 Commonwealth Edison has presented what
20 it believes to be a valid and usable cost study, the
21 cost study which is premised upon studies that this
22 Commission has considered and adopted previously.

1 With regard to the primary/secondary
2 split and, indeed, the MDS proposal, we are talking
3 about a tug of war here. What those parties don't
4 tell you is the following: You adopt the MDS
5 proposal and a primary and secondary split, that
6 will shift 274 million in costs from non-residential
7 to residential customers.

8 By way of illustration, Com Ed
9 originally proposed an increase of approximately 24
10 percent for residentials. The IIEC's proposal would
11 make that 55 percent. They don't talk to you about
12 numbers but those are the numbers when you look at
13 the MDS and primary/secondary proposals.

14 With regard to the primary/secondary
15 split itself, as the Commissioner correctly noted,
16 it does only apply to one percent -- less than one
17 percent of the customers. They don't discuss the
18 costs associated with Com Ed's reconfiguring its
19 books and records in order to account for the
20 primary/secondary split, and I believe, as
21 Commissioner O'Connell-Diaz noted, Com Ed's
22 mitigation plan -- to the extent that the primary

1 and secondary split is something that is directed to
2 something in the future, Com Ed's mitigation plan
3 here, in fact, would account for that difference in
4 our rate proposal and the rate in the cost study.

5 With regard to rate allocation from the
6 last case, there was some statement with regard to
7 what the Commission did and didn't do with the cost
8 study. I was just observing the following.

9 Of the 15 Com Ed customer distribution
10 classes, 12 of them have their rate based on --
11 explicitly based on cost-of-service study that the
12 Commission accepted in the last case. The three
13 customer classes not under that cost study are the
14 81 customers that we discussed earlier.

15 With regard to -- there were actually
16 -- to put them together, there was REACT and the
17 railroad's argument about customer-specific cost
18 studies. Com Ed has presented substantial
19 persuasive arguments and briefs with regard to why
20 specific cost studies are inappropriate, they're
21 very, very difficult to actually conduct, and in the
22 end of the day Com Ed does not support, and neither

1 does the proposed order support, specific
2 cost-of-service studies, and we urge the Commission
3 not order that in this instance.

4 Now with regard to the demonstrative
5 that Mr. Townsend showed you with blocks on the cost
6 allocation issue, I would suggest to you a couple of
7 things, first of all is that this Commission has
8 rejected on various occasions similar proposals. In
9 the last rate case a proposal that was made on
10 behalf of one of Mr. Townsend's other clients was to
11 set -- to separate 25 percent of customer care costs
12 to the supply function. That was rejected.

13 Also, in the case that the Commission
14 just decided in December related to Com Ed's
15 procurement cases involving Rider PE, this
16 Commission made a decision as to what were
17 appropriately-considered supply costs. REACT is
18 asking you to reverse these two decisions.

19 In addition, with regard to the theory
20 under which this cost allocation proposal is being
21 persuaded -- or presented, instead of blocks I
22 submit to you a house of cards. Why? Because the

1 theory upon which it's presented is based upon
2 assumptions. The record is specific to that effect.

3 Mr. Marola assumed, and assumed, and
4 assumed to arrive at his proposal and, in addition,
5 none of those assumptions were focused on Com Ed's
6 costs. They were based upon assumptions utilized in
7 other states.

8 In short, the proposal to separate 40
9 percent of Com Ed's customer care costs and shift
10 them to the supply function isn't based on Com Ed's
11 costs and is (sic) based on a series of assumptions;
12 moreover, as the record reflects those assumptions
13 are subject to wide variations in results if you
14 suddenly tweak any number of those assumptions.

15 Indeed, during cross-examination, one
16 subtle adjustment shifted this allocation from 64
17 million down to 17 million. In the end, there is
18 not -- there are no customer care costs that are
19 improperly allocated to distribution and the
20 Commission should so find.

21 COMMISSIONER FORD: Mr. Rooney, there's no place
22 in the record where cost of service to the customers

1 in high-voltage area rates have exceeded -- their
2 class rates have been exceeded?

3 MR. ROONEY: Well, for the high-voltage customers
4 we believe we presented evidence that their rates do
5 not recover their cost of service.

6 Now, finally, with regard to the
7 CTA/Metra arguments -- with regard to the CTA/Metra
8 arguments, I submit the following to the Commission.
9 On the one hand, if you choose the value of public
10 transportation and a propensity to give that a
11 subsidy, you choose the value of churches, schools,
12 other institutions, and give them a subsidy, in our
13 view the answer is none of the above. Set rates
14 based on cost. That's the fairest way to allocate
15 revenues among customer classes.

16 CHAIRMAN BOX: Mr. Rooney, how did you interpret
17 our language in the last rate case when we talked
18 about public concern and what we directed
19 Commonwealth Edison to do as it related to Metra and
20 CTA?

21 MR. ROONEY: Mr. Chairman, the company
22 interpreted that for purposes of that case and we

1 set rates accordingly. There were no directions
2 either in the conclusion itself, the findings, or
3 the ordering paragraphs that directed Com Ed to
4 continue that subsidy and consider that going
5 forward in future rate cases, and so we did not
6 propose that in this case.

7 To that end, I think we stated up
8 front we were concerned about setting rates based on
9 costs and that's the proposal that we submitted to
10 the Commission in this instance.

11 I'm available for additional questions.

12 CHAIRMAN BOX: The last answer kind of troubles
13 me. So that in this case and in future cases are
14 you saying that if the Commission wants something
15 done, we should expressly state it and not just give
16 an indication of what we want? We should explicitly
17 say must but not shall?

18 MR. ROONEY: No, no, no. In the last rate case
19 we did what the Commission asked us to do in the
20 Commission's directive, which is to adjust for the
21 railroad rates to reflect the Commission's
22 directive, and we did that.

1 CHAIRMAN BOX: In this case you are vague.

2 COMMISSIONER LIEBERMAN: We meant it for that
3 case.

4 MR. ROONEY: We interpreted it for that case
5 only, Mr. Chairman. It wasn't we were trying to
6 ignore anything.

7 CHAIRMAN BOX: Any questions for Mr. Rooney?

8 MR. LIEBERMAN: Yes. I have a question. I'm
9 kind of struggling with the subsidy argument. I was
10 looking at Mr. Munson's table. I didn't get a
11 chance to look at it, and, Mr. Munson, if you're
12 still in the room, it's kind of hard to read. It's
13 sort of multi-dimensional. It's kind of like in 3D.
14 If you have another version, it would be pretty
15 helpful.

16 It looks from his table the rate of
17 increase and just add cost for large customers is
18 averaged over the past five, six, seven years
19 somewhere in the 60 percent range and rate of
20 increase for the residentials have been in the 20
21 percent range, so I guess the question is to the
22 extent there's a subsidy going from residential --

1 or from small customers to large customers, we would
2 expect those rates -- I mean, if it were cost-based,
3 those rates would have been much higher rate of
4 growth.

5 MR. ROONEY: Just to be clear, the subsidies
6 we're talking about currently are all confined to
7 within the non-residential class, so the residential
8 class is not part of this subsidy discussion with
9 regard to existing rates.

10 COMMISSIONER LIEBERMAN: But the small
11 customers -- the small customers within the
12 non-residential are subsidizing the big customers.

13 MR. ROONEY: That's correct.

14 COMMISSIONER LIEBERMAN: So his table, if I read
15 it right, you know, what I can read --

16 MR. MUNSON: It might be helpful if I may provide
17 this copy.

18 (Document tendered.)

19 This is the old way they broke it down.
20 The top one is 800 kw. The one megawatt's 408 kw,
21 one to 3 megawatts are the top three, 6 to 10, and
22 then outlier is zero to 25 kw.

1 COMMISSIONER LIEBERMAN: Look at the bottom one.

2 MR. MUNSON: The bottom one of the larger

3 increases, then 25 to 100 kw residential,

4 single-family with space heat, residential

5 single-family without space heat, residential

6 multi-family with space heat, and

7 multi-family without.

8 COMMISSIONER LIEBERMAN: Could you give me a copy

9 I could read it better. I would appreciate that.

10 CHAIRMAN BOX: Any other questions for

11 Mr. Rooney?

12 COMMISSIONER O'CONNELL-DIAZ: Just following up

13 on what Commissioner Lieberman said with regard to

14 residential versus the small business industrial,

15 and I think that the AG's counsel brought this up,

16 that when we look at the whole picture if we tweak

17 one area it does affect residential rates, correct?

18 MR. ROONEY: If you go with an across-the-board

19 allocation method, Commissioner, the answer is yes.

20 COMMISSIONER O'CONNELL-DIAZ: And then we looked

21 at percentages that you just advised us on. That

22 would affect actually residential rates, correct?

1 MR. ROONEY: The percentage that we talked about
2 with regard to IIEC's proposal that would be as if
3 you accepted their cost study and
4 primary-and-secondary expense, but in terms of
5 across-the-board allocation method, there are
6 shifting of dollars going both ways.

7 COMMISSIONER O'CONNELL-DIAZ: Thank you.

8 MR. ROONEY: Thank you.

9 CHAIRMAN BOX: Thank you.

10 We are a little behind schedule.

11 Let's move on to the next issue, accumulated
12 provisions for depreciation and ADIT. On that, we
13 have allowed 34 minutes would be Mr. House from
14 Commonwealth Edison. I'm sorry.

15 I think while we're getting
16 re-arranged, why don't we take a few minutes break.
17 I know we are going to go to the next half. We'll
18 take a few seconds now.

19 MR. RATNASWAMY: Thank you.

20 (Whereupon, a break was
21 taken.)

22 CHAIRMAN BOX: We'll get started. I'm sure they

1 will be very respectful when they walk in, and we
2 will start with the second issue, and for those of
3 you who are here, I'm going to issue number two, and
4 since issue number four is only 10 minutes, we'll go
5 to two and four, then take a somewhat longer break,
6 but we'll go to issue number two, the accumulated
7 provisions for depreciation and amortization and
8 accumulated deferred income taxes. Mr. Ratnaswamy,
9 you want to proceed, please.

10 ORAL ARGUMENT

11 BY

12 MR. RATNASWAMY:

13 Thank you, Chairman, Commissioners. I
14 intend on using 2 1/2 minutes for my opening.

15 Under the Commission's three on point
16 orders in the Peoples' rate case and Com Ed's 2005
17 and 2001 rate cases, the Commission should approve
18 Com Ed's test year plan to depreciation reserve and
19 accumulated deferred income taxes balances and
20 reject the AG, CUB, and IIEC's proposal to inflate
21 those balances.

22 In the Peoples' case there's an excerpt

1 from the Commission's conclusion in the record.
2 Just six months ago, the Commission rejected the
3 same AG proposal as improper under its rules and
4 recognizing this issue comes up with a number of
5 cases. The Commission expressly sought to bring
6 certainty to this subject and subtle expectations
7 noting that absent clear and distinguishable reasons
8 to adopt the proposal subjecting the Commission to a
9 charge that's inaccurate, arbitrary, and capricious.

10 In the current case, the proposed order
11 of the Commission's conclusion section does not
12 mention the Peoples' case or the orders in the last
13 two Com Ed cases all which were the same matter on
14 the subject.

15 There are no clear and distinguishable
16 reasons in the case to waiver from the Peoples'
17 ruling, plus whatever potential hypothetical
18 distinction existed based on the proposition that
19 Com Ed originally proposed 21 months of capital
20 additions in the rate case, that is only improved by
21 the staff and Com Ed's stipulation.

22 Under that stipulation, Com Ed is no

1 longer seeking to recover the full 21 months of
2 pro-formal cap as (phonetic) but entitled to include
3 under the Commission rules only 18 months, so that
4 distinction about 21 months, which really is
5 unsupportable given the number of months, wasn't the
6 basis of prior decisions anyway, and it doesn't
7 relate to the rule. That distinction, which never
8 should have been important, is of no importance
9 here; nonetheless, in fact, under that middle ground
10 state by the stipulation, 18 months, one month
11 different than the period in Peoples, Peoples which
12 involves 15 months of capital expenditures and 17
13 months of capital additions being put into service.

14 The stipulation also provides a number
15 of other benefits that Com Ed is committed to,
16 benefits otherwise not be achieved in this case
17 without additional litigation in this case at all.

18 Staff agrees that staff's comment
19 position, which already removes \$176 million from
20 rate base, makes the AG, CUB, and IIEC proposal
21 improper and make the Peoples case and the Com Ed
22 2005 case indistinguishable.

1 AG, CUB, and IIEC all were parties in
2 the Peoples' and Com Ed 2005 cases have thrown a
3 very large number of arguments at the wall in their
4 briefs more than in their testimony, many which are
5 conflicting pretty much, which are irrelevant
6 because they don't relate to the basis of your prior
7 decisions. They said nothing that warrants reaching
8 different results than six months ago.

9 I would like to reserve the remainder
10 of my time for answering questions.

11 CHAIRMAN BOX: Any questions?

12 (No response.)

13 Okay. I'm sure we'll have some later.

14 Next staff of the Illinois Commerce
15 Commission 8 minutes -- 9 minutes. I'm sorry.

16 ORAL ARGUMENT

17 BY

18 MR. FEELEY:

19 The Commission should reject the
20 proposed service conclusions concerning this show of
21 pro-forma plant additions and accumulated provisions
22 for depreciation and amortization.

1 The proposed order makes the statement
2 that the staff position to only allow pro forma
3 plant addition through 2008 appears to be a
4 compromised position premised on no reduction rate
5 base for accumulated depreciation.

6 Contrary to the assessment, staff's
7 position on pro forma additions and accumulated
8 depreciation is not a compromise position. It's
9 based upon the analysis of staff witness Griffin and
10 it stands on its own.

11 Staff witness Griffin initially opposed
12 all of Com Ed's pro forma additions for 2008. He
13 opposed all the projected additions because in his
14 opinion they didn't meet the requirements of the
15 Commission's test year rules, actually 287.40;
16 however, Mr. Griffin did indicate that he would
17 consider any additional evidence the company
18 proposed in its rebuttal testimony.

19 After reviewing the company's rebuttal
20 testimony, Mr. Griffin found that the pro forma
21 adjustments, which included the projected first and
22 second quarter 2008 additions, were known and

1 measurable under the Commission's test year rules,
2 and with regard to the accumulated depreciation
3 issue, Mr. Griffin originally proposed adjustments
4 in service and accumulated depreciation to the
5 actual balances known at December 31, 2007 due to
6 the fact that Com Ed's original proposal was to seek
7 adjustments all the way through September 30 of
8 2008. That original proposal shifted completely the
9 largest component of Com Ed's rate base from the end
10 of 2006 test year for 21 months to September 30,
11 2008 and that would have been a comprehensive
12 restatement.

13 In order to mitigate that shift
14 proposed by Com Ed, Mr. Griffin proposed his net
15 plant adjustment. Under the stipulation, Com Ed
16 agreed to limit its pro forma plant additions to
17 June 30, 2008, which, as previously discussed, staff
18 has found to meet the requirements of the
19 Commission's test year rules.

20 By limiting pro forma additions to
21 those through June 30, 2008, there was no longer a
22 comprehensive restatement of plant balances as of

1 September 30, 2008, so staff withdrew its net plant
2 adjustment.

3 The proposed order inappropriately
4 accepts AG's adjustment regarding accumulated
5 provisions for depreciation and amortization. It
6 inappropriately relies upon the Commission's prior
7 order in Docket Nos. 02-0798, 03-0008, and 03-0009
8 consolidated, which were Ameren, CIPs, and UE cases.
9 It relies on those cases to support its adjustment
10 regarding accumulated depreciation and amortization,
11 but the relevant facts in this case are far
12 different from the Ameren case which was a case in
13 which the utility's historical net plant in service
14 was declining relative to the proposed order.

15 Mr. Ratnaswamy at the same time is
16 ignoring the orders in 05-0597, 01-0423, both Com Ed
17 rate cases, and then the recent Peoples and North
18 Shore rate case; however, if the final order in this
19 case include plant additions all the way out to
20 September 30, 2008 (sic) as the proposed order does,
21 then that would represent a comprehensive
22 restatement of plant balances and an accumulated

1 depreciation adjustment would be appropriate.

2 I have a few comments regarding the
3 reply exceptions of the AG and IIEC. The AG argues
4 in its reply exceptions, referring to Com Ed's
5 exceptions, that it's an absolutely false statement
6 that the Commission in each case for a utility's net
7 plant was significantly increased year to year has
8 rejected AG's accumulated depreciation adjustment as
9 improper.

10 To support its position, the AG cites
11 to the Commission's order in the 02-0798, the Ameren
12 case, and IP case of 01-0432. They're implying that
13 those cases were cases where net plant was
14 significantly increased.

15 They, the AG, also argues that the
16 Commission never concluded that the declining or
17 relatively static state of a utility's expected
18 capital investment should determine the proper
19 treatment for accumulated depreciation.

20 A review of the orders in 02-0798 shows
21 that the AG has confused the facts of the Ameren
22 case. At Page 8 of the Ameren order there's a

1 summary of the AG's position. It's clear from that
2 summary that UE's net plant was decreased over the
3 years and CIP's was almost level; therefore, that
4 case didn't involve utilities with significantly
5 increasing net plant as the AG implies in its reply
6 on exceptions.

7 In this case there's no dispute that
8 Com Ed's net plant is significantly increasing. For
9 that reason, the analysis in the Commission's Order
10 in 02-0798 is inapplicable to this proceeding.

11 With regard to the Order in 01-4332,
12 the IP case, the issue of making an adjustment for
13 accumulated depreciation was proposed by the AG and
14 it was accepted by IP; therefore, that issue wasn't
15 contested there and, as a result, it's difficult to
16 draw much of anything from the Commission's order in
17 that docket on this issue.

18 The IIEC makes a similar argument as AG
19 in its reply exceptions concerning 02-0798. Just
20 like the AG, the IIEC implies that the Ameren case
21 involve a case where there was a demonstrated trend
22 of significant increase in net plant. As I already

1 pointed out, that wasn't the case in Ameren.

2 In Ameren, again UE's net plant was
3 decreased over the years and CIPs was almost level,
4 neither had a trend of significant increases in net
5 plant as IIEC implies.

6 Accordingly, again, the Ameren order
7 doesn't apply to this case, and, again, they were
8 set to apply, which the proposed order ignores other
9 recent Commission orders in the recent Com Ed rate
10 case and the recent Peoples and the North Shore
11 cases.

12 Thank you. And if you have questions,
13 I can answer.

14 CHAIRMAN BOX: Any questions for Mr. Feeley?

15 COMMISSIONER O'CONNELL-DIAZ: Mr. Feeley, you
16 prepared staff's position on this issue. Is staff's
17 position if there is no reason or basis to
18 distinguish between or to reject the Peoples' order
19 six months ago when we looked at this type of issue
20 and addressed it, there's nothing in this record
21 that would give the Commission proper cause to have
22 a different rule than we did in Peoples' case? Is

1 that staff's position?

2 MR. FEELEY: Yes. We looked at that order in two
3 recent Com Ed orders and in our opinion there wasn't
4 any reason in this case to do anything different,
5 but that was -- there's a qualification.

6 COMMISSIONER O'CONNELL-DIAZ: I understand.

7 MR. FEELEY: If they went out to the 21 months,
8 then you have an opportunity --

9 COMMISSIONER O'CONNELL-DIAZ: To the third
10 quarter of 2008, staff's position there's nothing in
11 the record to have a different type of finding than
12 we do in the Peoples' case, correct?

13 MR. FEELEY: Correct.

14 COMMISSIONER O'CONNELL-DIAZ: Additionally, is it
15 staff's position to do so would be reversible error
16 by this Commission --

17 MR. FEELEY: I mean --

18 COMMISSIONER O'CONNELL-DIAZ: -- or there could
19 be a claim?

20 MR. FEELEY: Someone might have a good argument.

21 CHAIRMAN BOX: Any other questions of Mr. Feeley?
22 Commissioner Elliott.

1 COMMISSIONER ELLIOTT: Just to clarify on this
2 issue, it's a question of how far do you go out from
3 the test year period as to whether or not the
4 application of the accumulated depreciation is
5 assessed, is it, if it is --

6 MR. FEELEY: I think the first question is
7 which --

8 COMMISSIONER ELLIOTT: -- or is the restatement,
9 the major restatement?

10 MR. FEELEY: I think you have to first have to
11 look at the 02-0798 case. Those were cases where
12 the plant was decreased relatively stable. They
13 weren't cases where plant was significantly
14 increasing, so you didn't -- you don't have to get
15 to the -- if plant is significantly increasing, I
16 don't think you bring in the questions of do you
17 then consider -- have to consider what's happening
18 to accumulated depreciation, because if the plant is
19 decreasing, which it isn't here, and you go and put
20 in pro forma adjustments, you know that your plant
21 in actuality is going to be less than if you
22 consider pro forma adjustments without accumulated

1 depreciation, and so here we have a significant
2 increase in plant so you don't apply your reasoning
3 from the 02-0798 case.

4 COMMISSIONER ELLIOTT: I'm not sure increasing or
5 decreasing. I'm just trying to understand the
6 timing aspect of this.

7 Is it timing that's driving this or
8 significant increases?

9 MR. FEELEY: Well --

10 COMMISSIONER ELLIOTT: You seem to say that if
11 it's 21 months it's a restatement. If it's 19
12 months, does it get there? Is there a limit?

13 MR. FEELEY: The only evidence or the testimony
14 for staff on this was when they went to 21 months
15 that was a comprehensive restatement. When you went
16 to June 30th --

17 COMMISSIONER ELLIOTT: Is that from staff's
18 position that is the driver as opposed to time?

19 MR. FEELEY: That was the driver for staff's
20 proposal. Staff looked at it a little differently
21 than the AG and the IIEC. Staff went to -- when
22 they saw Com Ed going out 21 months, they looked

1 at -- well, let's just take the balances at 12-31-07
2 and go with what is net plant, their gross plant
3 less accumulated depreciation.

4 When Com Ed only goes to June 30th,
5 then that no longer was comprehensive restatement.

6 COMMISSIONER ELLIOTT: I guess the question is if
7 they had gone to June 30th and it had been a
8 significant restatement, would you then have
9 applied -- and it's not a timing issue. The
10 significant restatement is that the driver?

11 MR. FEELEY: Well, they did go to June 30, 2008
12 and we, staff, did not find that to be comprehensive
13 restatement of plant balances.

14 COMMISSIONER ELLIOTT: Exactly. So the argument
15 there was not to bring the accumulated depreciation
16 forward --

17 MR. FEELEY: Correct.

18 COMMISSIONER ELLIOTT: -- through to that period,
19 but had it been a significant restatement at that
20 point in time, it would have been the proposal to
21 bring the depreciated -- I'm still trying to make
22 sure.

1 MR. FEELEY: I'm not sure what you mean. When
2 you are saying a significant restatement, you are
3 meaning when I say comprehensive statement --

4 COMMISSIONER ELLIOTT: Yes, a comprehensive
5 restatement if it's not time sensitive is what I'm
6 trying to get to.

7 MR. FEELEY: Yet, the company had an '06 test
8 year, then they took '07, and then went another 9
9 months.

10 COMMISSIONER ELLIOTT: Understood.

11 MR. FEELEY: That was significant or
12 comprehensive restatement, but when they stopped at
13 June 30th, then that no longer was, and, for that
14 reason, staff no longer was proposing to look at net
15 plant at 12-31-07, which stated another way, was
16 taking accumulated depreciation after the end of the
17 test year 2006.

18 CHAIRMAN BOX: Further questions of Mr. Feeley?

19 (No response.)

20 Thank you very much.

21 MR. FEELEY: Thank you.

22 CHAIRMAN BOX: On that same issue we have two

1 other presenters for a total of 15 minutes will be
2 the Illinois Attorney General and IIEC.

3 ORAL ARGUMENT

4 BY

5 MS. DALE:

6 Good afternoon, Chairman Box,
7 Commissioners. I'm Janice Dale. I'm speaking on
8 behalf of People of the State of Illinois and today
9 and I'm speaking only for a minute. We concede the
10 rest of our time to Mr. Reddick, but I did want to
11 make one key point about this rate basis issue.

12 As you know, the Attorney General
13 retained David Effron to examine the net plant issue
14 on behalf of Peoples. Both AG witness Effron and
15 IIEC witness Gorman agreed that it's net plant, not
16 gross plant, that is the relevant measure for the
17 purpose of setting rates. Rates are not affected
18 dollar per dollar by gross plant addition, only by
19 net plant additions, and the proposed order
20 correctly recognizes this and agreed with this rule
21 when it adopted Mr. Effron's calculation of the
22 change in net plant to calculate Com Ed's rate base.

1 By accounting for the fact that Com
2 Ed's post-test year plant additions will be offset
3 by post-test year increases in accumulated
4 depreciation, the proposed order assures that Com
5 Ed's test year rate base will be representative of
6 Com Ed's actual circumstances.

7 This approach is the only way to avoid
8 what the Commission condemns in its Ameren decision
9 the error that takes place when old depreciation
10 amounts are mismatched with new plant additions for
11 the period during which rates are to be replaced,
12 and I'm available to answer any questions, but I
13 concede the rest of my time to Mr. Reddick.

14 CHAIRMAN BOX: How do you distinguish the case in
15 Peoples' case 07-0241?

16 MS. DALE: Well, the reasoning in Peoples' case
17 is because the Attorney General and others have
18 replied on certain cases in the previous
19 Commonwealth Edison cases and they were now relying
20 on those same cases again that their argument had to
21 be rejected.

22 It was our contention I think in our

1 application for rehearing that, in fact, what was
2 needed was an analysis of the facts and
3 circumstances of the Peoples' case, the facts and
4 circumstances particularly to that case and the
5 application of the rules and the law to those facts
6 and circumstances and not a mere repeat of the fact
7 that we cited those cases before, you can't cite
8 them now, and that's our position on Peoples' case
9 and, as you know, we're appealing that decision.

10 COMMISSIONER O'CONNELL-DIAZ: Is Mr. Effron's
11 adjustment the same in this matter as in the
12 Peoples' case?

13 MS. DALE: It wasn't exactly the same. I believe
14 in Peoples' case his adjustment was an adjustment to
15 depreciation expense. I don't think the pro forma
16 adjustments were the same in that case -- in this
17 case, but it's our position that the same principle
18 has to apply in every case is that you have to
19 match. If you go out 12 months on your pro forma
20 additions, you go out 12 months on accumulated
21 depreciation. If it's 18 months, or 21 months, or
22 how ever many months it is, it has to match, and

1 that's the principle that the court has upheld in
2 the DPI 2. There has to be a matching of costs and
3 revenues.

4 CHAIRMAN BOX: There was an appeal of '01 or '05
5 Commonwealth Edison's case.

6 MS. DALE: I think there is pending appeal on
7 '05.

8 CHAIRMAN BOX: The Commission ruled as they did
9 in the Peoples' case in those two cases as well?

10 MS. DALE: Well, the Peoples' case relied on the
11 Commonwealth Edison case but didn't really go into
12 detail as why they were doing so.

13 I believe the Peoples' case simply said
14 that our reliance on the Ameren case and Illinois
15 Power cases were misplaced and it didn't discuss
16 why.

17 CHAIRMAN BOX: The '01 case still on appeal?

18 MS. DALE: No, the '05 case.

19 CHAIRMAN BOX: No, I'm asking about the '01 case.

20 MS. DALE: The '01 case I can't recall exactly.
21 Mr. Reddick might know that better than I do. I
22 just can't recall that case off the top of my head.

1 CHAIRMAN BOX: That was in the '01 case?

2 MS. DALE: I believe it was.

3 COMMISSIONER O'CONNELL-DIAZ: Ms. Dale, what was
4 addressed in the '01 case with regard to net plant
5 in service, the decreasing amount in the case that
6 you cite, the Ameren case --

7 MS. DALE: The reference to --

8 COMMISSIONER O'CONNELL-DIAZ: -- in this instance
9 plant is increasing, so how is the case that you
10 cite relevant over the three cases that have
11 occurred since then and the Commission has
12 succinctly I think, especially in the Peoples'
13 order, set forth the standard that we'll be looking
14 at?

15 MS. DALE: It's our position that, in fact, it
16 was not whether or not plant is increasing or
17 decreasing. That is the determinative factor.

18 What is determinative is the matching
19 principle whether or not you are calculating net
20 plant. The only way you can get to net plant
21 calculation is to make sure that any accumulated
22 depreciation that is associated with plant additions

1 over a given period of time is included in coming to
2 net plant calculation, otherwise, you are just
3 calculating gross plant and gross plant is not a
4 meaningful measure of plant in determining rates.

5 I think even Commonwealth Edison in
6 their briefs whenever they refer to plant it's
7 always to net plant, because that is the relevant
8 measure, not gross plant, and it's our position that
9 this issue should be decided on those principles as
10 they're laid out in the Commission's Rule 287.40 and
11 in the BPI 2 decision, which, again, says you have
12 to match costs and revenues from the same time
13 period in order to get an accurate calculation rate
14 base.

15 COMMISSIONER O'CONNELL-DIAZ: So it's the AG's
16 position that the Commission's gotten it wrong for
17 many, many years?

18 MS. DALE: The Commission got it right in the
19 Ameren case. The Commission got it right in the
20 Illinois Power case. The Peoples' case is on appeal
21 as is the Commonwealth Edison case.

22 CHAIRMAN BOX: But you don't know about the one

1 case because the question I'm going ask I want it
2 delicate and it's not meant to embarrass anybody,
3 but is this position based on what the law is or
4 what you think the law should be? Because I'm
5 running into that quite a bit.

6 MS. DALE: It's based on what the law is and what
7 the law as laid out in the BPI 2 case states how do
8 you calculate rate base when you are looking at
9 rates.

10 CHAIRMAN BOX: But in this '01 case, if this was
11 an issue, and appealed, and resolved, I would think
12 that is the law.

13 MS. DALE: I'm going to have to defer to
14 Mr. Reddick on that. I just can't recall.

15 CHAIRMAN BOX: Before you make that argument, I
16 think you should know what the law is or what you
17 think it should be, because I'm not for sure about
18 the '01 case if that was an issue and appealed and
19 resolved by the court, but if it was, don't you
20 think it puts the issue to rest?

21 MS. DALE: I do not believe that was an issue.

22 CHAIRMAN BOX: That's why I'm asking.

1 MS. DALE: I don't believe that was an issue, but
2 on appeal I would be aware of. I don't recollect
3 that that issue in particular was decided on appeal
4 one way or the other.

5 CHAIRMAN BOX: Okay. I just want to make sure.

6 Any other questions?

7 (No response.)

8 Thank you, Ms. Dale.

9 MS. DALE: Thank you.

10 CHAIRMAN BOX: Mr. Reddick.

11 COMMISSIONER O'CONNELL-DIAZ: Is someone using
12 that board?

13 MR. REDDICK: I'm sorry?

14 COMMISSIONER O'CONNELL-DIAZ: Is this somebody's
15 board?

16 MR. REDDICK: I'm not going to use it.

17 COMMISSIONER BOX: I think somebody's going to.

18 COMMISSIONER O'CONNELL-DIAZ: We want to make
19 sure everybody's awake there. You better get that
20 out of there.

21 MR. REDDICK: I don't mind it.

22

1 ORAL ARGUMENT

2 BY

3 MR. REDDICK:

4 My name is Conrad Reddick and I'm
5 appearing here on behalf of the IIEC today and I'm
6 about to refer to my notes about some of the things
7 I already heard.

8 First of all, I agree with Ms. Dale
9 that the genesis of this problem is the '01 case,
10 the '01 Com Ed case. As she said, the analysis was
11 very, very shallow in that case. It consisted
12 mainly of listening to arguments that Com Ed made
13 and adopting your position.

14 The subsequent case, '05 -- the '05
15 case --

16 CHAIRMAN BOX: Let's resolve that one first in
17 its entirety. Was this an issue in the '01 case --

18 MR. REDDICK: It was an issue in the '01 case.

19 CHAIRMAN BOX: -- and appealed?

20 MR. REDDICK: I don't know whether it was
21 appealed. I think I can answer your question. Does
22 it resolve the matter? I don't think it does,

1 because regardless of the appeal, the appeal would
2 only establish the law and the policy of the
3 Commission. It would not establish the facts, and
4 it's our position that the facts in this case are
5 distinguishable from the prior case.

6 The second point I want to make, as a
7 place holder (phonetic) I hope to get back to it,
8 aside from the fact that there are very little
9 analysis in those two Com Ed cases and one Peoples'
10 case consisting mainly of rejecting references to a
11 more detailed analysis of the facts of the record
12 and reference to the Ameren cases.

13 I wanted to go back to Mr. Feeley's
14 comments and note that as he acknowledged
15 Mr. Griffin, their accountant, when he looked at the
16 post-test year adjustments for plant additions
17 through the end of 2006, a full year after the end
18 of the test year, not full year, but through 2007,
19 he insisted that there be a match between plant
20 additions and accumulated depreciation changes.
21 He insisted that there be a match between increases
22 to rate base and decreases to rate base over the

1 same period. Only when the staff entered the
2 stipulation with Com Ed did we get the somewhat
3 difficult-to-understand position that Mr. Feeley was
4 trying to articulate.

5 Ultimately he comes to the conclusion
6 that June 30th is not a comprehensive restatement.
7 September 30th is a comprehensive restatement. He
8 never tells us what a comprehensive restatement is.
9 It's simply an argument about labeling. If we label
10 it comprehensive restatement, we apply the pro forma
11 addition to the rule. If it's not a comprehensive
12 restatement, we don't apply the pro forma additions
13 to the rule.

14 Second, the findings in the proposed
15 order do not adopt the stipulation. The stipulation
16 was expressly conditioned on all portions of -- all
17 elements of the stipulation being agreed to by the
18 Commission. That hasn't happened, and we'll come
19 later to the argument about labeling, but I would
20 like to tell you how we got here.

21 In 2003 the Commission had an
22 opportunity to examine pro forma adjustment for

1 plant additions and accumulated depreciation for a
2 variety of circumstances in a single case and it did
3 so in an intensive analysis in 2003 consolidated
4 Ameren cases. That analysis was comprehensive in
5 its scope because it covered numerous plant
6 investment scenarios and coherence in its
7 application because it yielded lawful and logically
8 consistent results when applied in various
9 circumstances.

10 The over-arching objectives the
11 Commission stated in that case were, one,
12 consistency with test year principles of matching,
13 as Ms. Dale explained, and, two, reflecting the
14 costs and revenues actually expected during the
15 period rates would be affected.

16 In that context, the Commission defined
17 the outcomes of its analysis in the different plant
18 circumstances in those consolidated cases.

19 In the case that is on point here, the
20 Commission determined for an Ameren utility with,
21 quote, significant post-test -- I'm sorry -- test
22 year capital additions, end quote, that quote again,

1 UE's proposed additions to plant in service should
2 be included in rate base to the extent that they
3 exceed increased accumulated depreciation.

4 The order did not, as was suggested by
5 Mr. Feeley, hinge on the application of the pro
6 forma test year rule or the offset of depreciation
7 on a trend.

8 I will quote from the opinion. The
9 Commission said where there is a demonstrated trend
10 of significant increases of net plant, the
11 Commission might be inclined to find post-test year
12 capital additions should be reflected in rate base.

13 Similarly, significant post-year
14 capital additions that were not largely or entirely
15 offset by increases in accumulated depreciation the
16 Commission might be inclined to allow post-capital
17 additions to rate base.

18 All this says is look at the facts.
19 Look at the facts. Trend does not determine the
20 outcome. Months do not determine the outcome. The
21 Commission's objective is to reflect what's going to
22 be in play during the period rates are in play --

1 the rates are in effect.

2 So we now come to the Com Ed cases.

3 With the exception of the Com Ed case, one Com Ed
4 case, which post-dated the Ameren case and Peoples'
5 case, both here in Chicago, Ameren case analysis has
6 been consistently applied to all the other utilities
7 in the state with outcomes determined by uniform,
8 coherent, fact-based analysis, and the facts of the
9 rates in each case.

10 The issue before the Commission today
11 is whether you will reverse the proposed order
12 application of that consistent analysis to the facts
13 in this case.

14 COMMISSIONER O'CONNELL-DIAZ: What case is that?

15 MR. REDDICK: I'm sorry?

16 COMMISSIONER O'CONNELL-DIAZ: What case is that
17 you just cited?

18 MR. REDDICK: The Ameren case, the --

19 COMMISSIONER O'CONNELL-DIAZ: You said Peoples'
20 case --

21 MR. REDDICK: -- 02-0798 case, the 2001 case and
22 the 0591.

1 Com Ed asked the Commission to abandon
2 the approach it uses for everyone else to allow Com
3 Ed to increase its rate base by post-test year gross
4 additions to plant while ignoring offsetting
5 decreases to rate base that will occur as Com Ed
6 recovers invested capital through depreciation.

7 The proposed order applied
8 well-reasoned analysis and it concluded that the
9 known and measurable increases Com Ed rate base
10 attributable to plant additions would be recognized
11 but only to the extent that they exceeded the known
12 and measurable contemporaneous decreases to Com Ed's
13 rate base which are recorded as accumulated
14 depreciation and deferred income taxes.

15 There is no dispute that Com Ed will
16 recover capital and will reduce its rate base
17 through Commission-mandated depreciation.

18 The reductions are certain. They're
19 known and measurable. They're calculated using
20 Commission-approved depreciation rates, accounting
21 procedures, and rate base analysis. This is not
22 disputed.

1 The Commission can, and I'm quoting
2 again from the Ameren case opinion, insure that the
3 rates established are reflective of costs and
4 revenues that may be expected for the period during
5 which such rates are in place only if the Commission
6 recognize both increases and decreases to Com Ed's
7 rate base that will occur over the same post-test
8 year period. The Ameren cases analysis does that.
9 The proposed order does that. Com Ed's proposal
10 does not.

11 So we have in this case Com Ed's latest
12 and most extraordinary expansion of the Commission's
13 decision in 01-0423, which pre-dated the Ameren
14 cases by the way.

15 That decision, as I said, is not nearly
16 as full in its analysis and explanation or its
17 consideration of substantive matters as the Ameren
18 cases' opinion.

19 The Commission here cannot blindly
20 replicate past outcomes as Com Ed asks. This is not
21 a Commission where give it to me once, I'm entitled
22 to it forever is the rule of law.

1 In any case, since the Commission
2 decisions are not res adjudicata, the Commission is
3 not constrained by the prior Com Ed decision or
4 Peoples' decision. Different proofs, different
5 records, different arguments may require different
6 results.

7 In fact, simply having more information
8 or a better understanding of the consequences of a
9 decision is an adequate basis for a different
10 decision.

11 COMMISSIONER O'CONNELL-DIAZ: Are you suggesting
12 the Commission didn't know what they were doing when
13 they enacted those orders?

14 MR. REDDICK: I'm suggesting that the Commission
15 may not have anticipated what I'm about to describe
16 which I believe may be an abuse of latitude that was
17 given by the Commission to the utility. There was
18 no way for the Commission to foresee that.

19 What are those consequences? Well, in
20 Docket 01-0423 Com Ed requested a pro forma
21 adjustment to increase its rate base by \$253 million
22 for 6 months of post-test year activity.

1 In Docket 05-0597 Com Ed proposed to
2 increase its test year rate base by more than twice
3 that amount, by more than \$557 million for 12 months
4 of post-test year gross additions, also, without
5 recognizing the offsetting decreases in plant
6 investment over the same period.

7 The effect there in 05-0597 was to
8 increase the rate base by more than half-a-billion
9 dollars even though under Com Ed's long accounting
10 practices, the accounting -- account would never
11 show a net increase of that magnitude.

12 In this case Com Ed has proposed to
13 increase its rate base by more than \$1 1/2 billion
14 for 21 months of post-test year gross plant
15 additions again without recognizing any of the
16 contemporaneous decreases in plant investment due to
17 increased accumulated depreciation.

18 In each of those cases, Com Ed has
19 rejected the option of filing a future test year
20 case that would include all of its plant additions.

21 Com Ed's witness Mr. McDonald,
22 testified that one of the factors in Com Ed's

1 decision was the expectation that it can continue to
2 make these one-sided plant additions to a historical
3 test year even though he admitted that a future test
4 year would more accurately reflect the costs and
5 revenues in place while the rate -- during the
6 period of time -- I'm sorry -- during the period of
7 time the rates are in effect. The rate impact here
8 of Com Ed's unbalanced proposal is almost a hundred
9 million dollars a year in customer rates.

10 Com Ed has made several arguments to
11 support its position over the years, the big one
12 being that this moves the test year forward toward
13 accumulated depreciation in violation of Rule
14 287.40. Did I say that right? Yes, 287.40.

15 In this case the testimony of Com Ed's
16 witnesses and intervenors' witnesses shows that that
17 clarification is not a real distinction. In fact,
18 Com Ed's partner in urging the Commission to approve
19 this one-sided adjustment, the Commission staff, was
20 unable to maintain the charade.

21 In the staff's brief the staff said, as
22 Mr. Feeley told you just a few minutes ago, that Com

1 Ed's pro forma adjustment for gross plant additions,
2 quote, shifted completely the largest component of
3 Com Ed's rate base from the end of 2006 test year
4 forward 21 months to September 30, 2008.
5 If moving a test year is a test, either both
6 adjustments must be recognized or neither should be
7 recognized.

8 In the past and in this case Com Ed
9 argues that 287.40 prohibits recognition of test
10 year increases to rate base that will occur at the
11 same time as plant increase to rate base. On this
12 record that argument is exposed as baseless. Com Ed
13 has been reduced to contending that the changes in
14 plant investment referred to in the Commission's pro
15 forma adjustment rule can only increase utility rate
16 base.

17 The reference that -- the reference to
18 changes in plant investment instead of to net plant
19 means that only the activity of investing can be
20 recognized and the removal of investing cannot.

21 In past cases Com Ed has also argued
22 that the adjustments for accumulated depreciation

1 should not be allowed because it's not related to
2 its plant additions.

3 Well, if that were the rule, there
4 would be many consequences that I'm sure the
5 Commission did not contemplate when it passed the
6 rule. One, if Com Ed can control all other known
7 and measurable adjustments to the test year data by
8 its own selection, it limits the Commission, it
9 limits all of the parties, and it limits the degree
10 to which we can match as the case law requires and
11 as your own rule requires increases the rate base
12 with decreasing the rate case that occur at the same
13 time when they are both certain known and
14 measurable, and I'm in the red now, so let me make
15 one final point.

16 Com Ed raises for the first time in
17 this case the argument that the Commission intended
18 to reduce the effects of regulatory lag for
19 utilities. That is an aspect of an argument
20 Mr. Feeley made to you; however, Com Ed or staff has
21 cited no Commission opinion that states that as an
22 objective of its pro forma rule or recognizing

1 pro forma additions.

2 Moreover, and more important, I think
3 the General Assembly has adopted a regulatory regime
4 that prescribes a different remedy for regulatory
5 lag.

6 The utility has an unfettered right to
7 seek rate relief at any time as a lawful remedy for
8 the effect of regulatory lag; moreover, the
9 Commission's results provide the utility with an
10 option for future test year that assures that plant
11 additions even where there is an increase in trend
12 of plant investment so that that isn't left out so
13 that it can be taken care of.

14 Nowhere does the Commission adopt
15 unlawful, inflated rates, and inflated rate bases as
16 a remedy for that supposed problem.

17 Finally, I just want to remind the
18 Commission that what we have here are two rules, one
19 that's applied to everybody else in this case and
20 one that applies to Com Ed and one in Peoples' case
21 here in Chicago.

22 Applying a previously-articulated,

1 well-reasoned analysis that is comprehensive in its
2 scope and coherent across diverse fact-situations
3 uniform to all utilities in the state would not, as
4 Com Ed suggest, be an arbitrary action, rather a
5 consistent analysis, removes the arbitrariness of
6 continuing different policies for different
7 utilities and it enhances predictability and
8 continuity of regulation in Illinois. Thank you,
9 and I'm available for questions.

10 CHAIRMAN BOX: Any questions for Mr. Reddick?

11 (No response.)

12 Thank you.

13 MR. REDDICK: Thank you. I'm available for
14 questions.

15 REBUTTAL

16 BY

17 MR. RATNASWAMY:

18 Your Honor, the next time the IIEC
19 cites a case since Ameren where this adjustment has
20 been approved, it will be the first time. It's not
21 in Mr. Gorman's testimony. It's not in Mr. Effron's
22 testimony. It's not in any of the four briefs

1 filed by the IIEC. It's not in any of the four
2 briefs cited by the AG. It's not in any of the four
3 briefs filed by CUB. They have cited no case by
4 Ameren when it came out and it came out what they
5 propose.

6 I think this is the first time I have
7 ever heard a prior Commission decision distinguished
8 based on the number of words in the Commission's
9 conclusion, but, by the way, they're also mistaken
10 about that. The Commission include section in the
11 Peoples case is a longer section in Ameren.

12 One of the things that was in Ameren
13 though that Mr. Reddick did not mention is the
14 sentence just before he started quoting, which is
15 that the Commission finds that where historical net
16 plant in service is either declining or relatively
17 static as in these cases post-test year pro forma
18 increases to plant in service require further
19 analysis. That's the paragraph before he quotes
20 from. That's the one in which the Commission said
21 because of those facts we have to do a further
22 analysis.

1 This case doesn't have all those facts.
2 No one disputes this case doesn't have all those
3 facts. In fact, I thought this was going to be
4 closer.

5 (A pause.)

6 I'm not sure where I moved it. This is
7 what the AG said in the Ameren case. According to
8 the Commission's own order, this is the lead
9 argument of the Attorney General. The AG argues
10 that because net plant in service has decreased
11 slightly over the past five years for UE has
12 remained almost level for CIPs while in the
13 post-test year additions without also adjusting
14 accumulated depreciation reserve would distort the
15 revenue requirements for the company. This is a
16 factual difference between that case and this case.

17 In 2003 to 2005 Com Ed's net plant went
18 up by an average of 355 million; in 2006, 373
19 million. Contrary to Mr. Reddick's assertion about
20 500 million being unheard of, Mr. Effron's testimony
21 and schedules show that it went up by 449 million
22 last year.

1 Much is made of the matching principles
2 as well. Whose proposal is closer to a Com Ed
3 actual cost will be when these rates are in effect.
4 There is a witness who testified about these,
5 Mr. McDonald, Ms. Holland (phonetic) and
6 Ms. Frank.

7 In Mr. McDonald's rebuttal, he shows
8 you what are the 2009 costs that are estimated, the
9 cost-of-delivery service for Commonwealth Edison
10 Company. The rate base number in the 2009 estimate
11 is hundreds of millions of dollars higher than what
12 we're proposing.

13 If the AG and CUB adjustments were
14 adopted, I don't have the exact number in my head,
15 but I think it would be approaching something like a
16 billion dollars too low of a rate base for our
17 actual costs.

18 The Commission certainly has taken into
19 account the rate of investment as the AG's argument
20 in the Ameren case shows.

21 Let's talk about the months issue
22 because some parties seem this matters; for others,

1 it doesn't. First, again, under staff's comment
2 position is reduced to 18 months.

3 Now let's just stop with the proposed
4 order. The proposed order said 21 months is
5 unprecedented, therefore, does it say the adjustment
6 is, therefore, approved for the last three months?
7 Is that the unprecedented part? It doesn't. It
8 approves -- improves the adjustment for all seven
9 quarters of cap add (phonetic) even though in the
10 Com Ed 2005 case there were four quarters of cap add
11 (phonetic) adjustments and you had 17 months with no
12 adjustment in the Peoples' case.

13 So even if you start with the premise
14 of the 21 months somehow matters, the adjustment is
15 wildly overstated because it's for the whole period,
16 not for the part supposedly is going too far;
17 however --

18 COMMISSIONER LIEBERMAN: Can I take you back to
19 the net changes in net plant. I don't know, maybe
20 because it's late in the day on Friday, but I'm
21 missing the relevance of whether the plant -- the
22 net plant's increasing or decreasing. I mean, it

1 seems to me the principle -- the matching principle
2 would hold in either case, where it is relevant in
3 Ameren it's declining in Com Ed.

4 MR. RATNASWAMY: Let's take the matching
5 principle at face value. You want to have both
6 historical test year cases and future test rate
7 cases, so the revenue requirement approved makes
8 sense for which the rates are going to be in effect.

9 If you are investing at this rate of
10 investment and you are limited to the -- and you are
11 limited to the capital additions, minus all the
12 change in the depreciation reserve and ADIT,
13 accumulated deferred income taxes, you never
14 recover, and consider, for example, the last Com Ed
15 case. What was that 2000 test year, 2005 capital
16 additions? When did the rates go into effect?
17 1-1-07.

18 All the capital additions that Com Ed
19 made in 2006 that started accruing depreciation Com
20 Ed will never recover the loss -- the return for
21 that period. They can't because that would be
22 retroactive ratemaking.

1 So between the cases, and a utility
2 that's investing in our system, I think what we want
3 for safety and reliability reasons, they will be
4 forced to make investments that they can never fully
5 recover the cost of if you adopt the AG and IIEC
6 proposals.

7 Now in terms of the matching
8 principles, that means your rates are out of sync
9 with your costs, because for a utility like Com Ed,
10 the rate will always under-recover the capital
11 investment and they'll always be lower than actual
12 cost of service in that period.

13 For a utility like Ameren-UE, the
14 matching principle makes sense. They are not going
15 to under-recover any of their investments because
16 their net plant isn't increasing between rate cases,
17 whatever rate they're investing in isn't enough to
18 have a significant increase in net plant. They
19 don't miss out on any recovery.

20 COMMISSIONER LIEBERMAN: Isn't this all fixed
21 with the forward test year? This whole conversation
22 would be fixed by a prospective. That's essentially

1 what you are doing. It seems to me you are sort of
2 pushing forward.

3 MR. RATNASWAMY: I guess I would like to say four
4 things about that. One is the evidence put in talks
5 about why a historical test year rate case was
6 chosen versus a future test year. There's been some
7 innuendo about that. The fact is the only evidence
8 in the record shows if we had chosen a future test
9 year, the rates would have been much higher.

10 Mr. Reddick elected to quote from the
11 transcript of Mr. McDonald. He said the future test
12 year would be more representative. That's true
13 because it would have been higher.

14 The future test year rule in addition
15 the evidence is -- the evidence is that Com Ed took
16 into account its current financial condition and it
17 also took into account the defickling (phonetic) in
18 preparing the future test year rate in this case,
19 and that takes extra time, so Com Ed, based in part
20 on the Com Ed 2005 decision, decided that given its
21 current defickle financial condition, it made the
22 most sense to come in with a historic test year rate

1 case and it had to take into account how much extra
2 difficulty there is in a future test year with more
3 requirements, and, in addition, it is not the case
4 that if a future test year rate case fixes all those
5 or this.

6 I would say it fixes some of this for
7 two different reasons. It doesn't get you all the
8 way there. One is going back to the Nicor 2004
9 future test year rate case, the Commission ruled in
10 that case that in a future test year, even with the
11 utility with significantly increasing net plant, you
12 only use an average rate base.

13 So even in a future test year rate
14 case, the utility will not recover all of the
15 capital additions it makes in that future test year,
16 plus future test year rate case rules have no
17 provisions for pro forma adjustments, so any
18 investment that is made after the future test year
19 -- so future test year rate case not only was it not
20 really a feasible option for Com Ed, it would not
21 have solved the problem even if it had been
22 feasible.

1 In any event, the complaint that we
2 should have filed in future test year rings awfully
3 hollow from people who claim to believe that a
4 matching principle when, in fact, our cost would be
5 higher and future test year rate case would have
6 resulted in a higher revenue requirement.

7 COMMISSIONER LIEBERMAN: Okay.

8 CHAIRMAN BOX: I feel obligated. Mr. Reddick,
9 would you like to respond to this, because you were
10 quite persuasive until about the paragraph you left
11 out about increasing and decreasing in value.

12 MR. REDDICK: No, the paragraph that I didn't
13 quote is a part of what I described as a
14 comprehensive analysis by the Commission in that
15 case. They looked at all the factual situations
16 that might come up. They addressed what would
17 happen if you had an upper trend and a downward
18 trend and in both cases, as Mr. Ratnaswamy said, if
19 you got a downward trend, the Commission will look
20 further into the effects of the case. If you have
21 an upward trend, I don't agree that the Commission's
22 decision will say we will not have any further

1 analysis, we will not look at the facts, we will
2 automatically grant you the pro forma increase.

3 It simply says we might be inclined to
4 grant a pro forma increase for plant additions under
5 those circumstances, and, as for the future test
6 year, I don't think we need to spend a whole lot of
7 time on future test years too hard, but to the
8 extent that we have a future test year rule that
9 doesn't permit pro forma adjustment, that's because
10 the future test year rule permits you to go forward
11 in time, two years forward in time, to capture those
12 plant additions.

13 The problem, well, to avoid the
14 innuendo, again, I'll say one of the effects of the
15 future test year is that a future test year compels
16 you to match. It doesn't allow you to do an
17 unbalance adjustment.

18 So I happen to agree with Commissioner
19 Lieberman that, yes, a future test year resolves a
20 great many of those problems. Is anything perfect?
21 Of course not. Is regulatory lag necessarily a bad
22 thing? Not in all circumstances.

1 ORAL ARGUMENT

2 BY

3 MR. RIPPKE:

4 Good afternoon, Mr. Chairman and
5 Commissioners. When considering how the proposed
6 order addresses the costs of underground cables and
7 services in the evidence supporting those costs we
8 ask that the Commission do two things.

9 First, as explained in our briefs with
10 respect to the disallowance of \$17.7 million of rate
11 base recommended by the proposed order, it is Com
12 Ed's position that if the Commission approves the
13 issue resolutions jointly recommended by Com Ed and
14 staff, Com Ed will accept that disallowance for the
15 purposes of this case; however, it is also our
16 position, for the reasons stated in the brief, that
17 no other adjustments can be supported and that the
18 adjustment cannot be -- even that adjustment cannot
19 be supported under other circumstances.

20 Perhaps more importantly, the second
21 question of how Com Ed -- of how the Commission
22 addresses staff's desire for additional information

1 beyond that which has been required in the past
2 about increasing asset values is a question that
3 staff and Com Ed have tried to work cooperatively to
4 address.

5 We each considered the issue carefully
6 and have agreed I believe to work together on this
7 issue to identify practical information and useful
8 information that can be provided to staff without
9 putting demands on the company that would frankly
10 result in significant increases in investments in
11 computer systems necessary to maintain that
12 information.

13 I believe we have arrived at language
14 implementing that which is the language reflected in
15 Com Ed's reply briefs on exceptions which I
16 understand staff has no objection to.

17 It is my belief that this resolution
18 makes sound policy sense. It is a way in which
19 staff can get the information they need and the
20 information that they desire while at the same time
21 not requiring a substantial increased investment
22 that would result in increased rates and also being

1 fair to Com Ed by not retroactively applying it to a
2 standard and requiring it to produce information
3 that it has not been required to produce in the
4 past. It's a win-win situation.

5 We urge the Commission to adopt it and
6 we commit to working with staff in good faith to
7 identify and implement that information.

8 Barring questions, I would move my
9 remaining 2 1/2 minutes to SMP. Thank you.

10 CHAIRMAN BOX: Staff. Mr. Fosco.

11 ORAL ARGUMENT

12 BY

13 MR. FOSCO:

14 Good afternoon, Chairman Box and
15 Commissioners. I am Carmen Fosco, one of the
16 attorneys representing staff, and I will be
17 addressing the underground cables and services
18 issue.

19 As set forth in staff's briefs on
20 exception, the proposed order granted some
21 adjustment but not staff's full adjustment on this
22 issue.

1 We believe the proposed order is
2 correct in finding that Com Ed's proof was not fully
3 adequate; however, as stated in our brief on
4 exceptions, we do recommend that if the Commission
5 accepts the set of issue resolutions set forth in
6 the stipulation we will press no further on this
7 particular issue.

8 In the alternative though, if the
9 Commission doesn't accept the set of issue
10 resolutions as set forth in the stipulation, we
11 believe that staff's full adjustment is appropriate
12 for the reasons set forth in our briefs.

13 As to the issue of information that was
14 a key fact in staff's case, that information wasn't
15 fully adequate and we believe that this Commission
16 needs to send a message that Edison needs to address
17 this issue.

18 Having said that, Edison was responsive
19 in its reply brief on exceptions to staff's proposal
20 to provide this information, Edison envisions a
21 process, and we don't dispute that. Clearly the
22 record in this case doesn't fully resolve all the

1 issues in terms of what's available under the system
2 and how easily items can be produced.

3 With that in mind, we do not object to
4 the alternative language that Edison presented in
5 its reply briefs on exceptions with respect to the
6 information issue.

7 As I said, an alternative position is
8 that you should grant the full adjustment if you
9 don't accept the stipulation, but having said that,
10 I guess I have no further remarks. I would be
11 willing to answer any questions that you would have.

12 CHAIRMAN BOX: When you say there's not enough
13 evidence, not enough evidence presented or actually
14 it's in the record for review?

15 MR. FOSCO: Well, the staff case was that we knew
16 we had a significant number of additions, and we
17 just heard a big argument about how Com Ed always
18 has an increasing rate base, so this is an ongoing
19 issue.

20 Staff has to look at this, and one of
21 the things that staff wanted to do was to look at
22 the increases and then try to make, you know, a

1 high-level value judgment about those increases, so
2 what staff did was analyze the unit cost, and when
3 staff looked at the unit cost, there were some costs
4 that increased more than others and we felt that
5 that change was not explained.

6 I'm certain the company would say,
7 well, we provided testimony about how we construct
8 projects, and that's true, but we still feel that as
9 regulators of staff the -- we have to have tools
10 that work for us and in this case that's why we
11 think we need the information.

12 So it's in that sense, Chairman Box,
13 that we felt that Com Ed's presentation wasn't
14 adequate and we think the proposed order agrees with
15 that. It just reduced the adjustments based on some
16 cross that showed what happened when you drop the
17 one year from the comparisons.

18 COMMISSIONER O'CONNELL-DIAZ: Mr. Fosco, with
19 regard to staff and the company's position, it
20 appears that you will work together to come up with
21 a format that is forthcoming with information in a
22 fashion that staff is comfortable with?

1 MR. FOSCO: Yes. The company put in very
2 favorable language from our point of view that they
3 would present. They clearly said if anything
4 doesn't have a significant cost, they'll provide it
5 to staff and they agreed to work with us to let us
6 know what information is available, and I think all
7 they did was sort of preserve their right to say now
8 this might cost this much money and we don't know --
9 from their point of view, they're saying we don't
10 know if that's relevant. Obviously, we think it
11 might be worth it, but that's an issue that we can
12 address going forward and the company has committed
13 to working with staff on that basis.

14 COMMISSIONER O'CONNELL-DIAZ: This is more, for
15 lack of a better word, a complete break down of
16 material, labor, cost per project, as they seem to
17 have like this big overall cost basis and you want
18 more discreet.

19 MR. FOSCO: That was the issue, your Honor.
20 There's the FERC accounts and those individual FERC
21 accounts the company's system apparently did not
22 keep the particularized labor and material costs

1 that staff was looking to focus on, and we did have
2 some material and information for the total amount
3 of plant added but not for the specific further
4 accounts.

5 CHAIRMAN BOX: Any questions?

6 MR. RIPPIE: Mr. Chairman, if I might be allowed
7 leave, and I promise it will only be about two
8 minutes, just to be clear, we believe, as Mr. Fosco
9 said, that this issue -- that we can resolve this
10 issue in a way that makes sense not only for this
11 case, but for future cases, but so there's no
12 misunderstanding, if this Commission rejects that
13 joint resolution, the company does strongly believe
14 that it provided adequate evidence to justify all of
15 its rate base additions, including with respect to
16 underground cables and services and, indeed,
17 provided a greater level of evidence than been
18 required of other utilities.

19 We believe with staff that you need not
20 reach that issue because, as we said, we have
21 provided a way that makes sense in this case and for
22 the future.

1 CHAIRMAN BOX: Questions?

2 (No response.)

3 We will take a five-minute break and
4 five minutes only.

5 (Whereupon, a 5-minute
6 break was taken.)

7 We'll start on the last issue which is
8 Rider SMP. If we can start moving towards our
9 seats. The last topic shown before us is Rider SMP
10 in which issues are raised by the rider and the
11 smart grid. We have a whole 49 minutes. I think
12 we'll get through it a little sooner than that.
13 Starting off with Commonwealth Edison 15 minutes
14 plus your 2 1/2.

15 ORAL ARGUMENT

16 BY

17 MR. RIPPIE:

18 Good afternoon, again, Mr. Chairman and
19 Commissioners. My name again is Glenn Rippie and I
20 am counsel for Com Ed. I will be addressing in this
21 segment of oral argument how the Commission can take
22 policy action to deliver real and significant

1 benefits to customers by moving forward with smart
2 grid technologies.

3 I will reserve the remaining portion of
4 my time after this presentation for rebuttal and
5 also, with your leave, my colleague, Mr. Emmitt
6 House, who's at the table with me, will address any
7 questions that the Commissioners may have or that
8 our opponents may raise with respect to the legality
9 of the legal authority that the Commission has to
10 approve riders like Rider SMP. I will address
11 matters of technology, policy, finance, and rate
12 structure.

13 So what does Rider SMP do and why
14 should you adopt it? Com Ed, make no mistake, asks
15 you in this docket to approve a rider mechanism. It
16 is a structure in a tool. It is a means to adopt
17 smart grid technology in a manner that is under your
18 complete control and that allows you to evaluate on
19 a project-by-project basis those smart grid
20 technologies and test them against the types of
21 information and evidence that you laid out in the
22 Peoples' case.

1 What does it do in order to accomplish
2 that? First, Rider SMP establishes a procedure
3 under which stakeholder input into potential smart
4 grid projects can occur and under which you can then
5 after that stakeholder input has occurred review the
6 projects and make an independent determination in
7 each case whether the project should proceed.

8 Second, Rider SMP allows Com Ed to
9 recover return off and on keeping most grid
10 investments down, and if you can just pause for a
11 second, it will be clear. It does not recover the
12 cost of the smart grid investment.

13 If we invest a hundred dollars in the
14 smart grid project, \$100 does not flow through Rider
15 SMP. All that flows through Rider SMP is return off
16 and on that hundred dollar investment in the period
17 before the next rate case when it gets rolled into
18 rate base like it normally otherwise would.

19 Absent that rider, however, that
20 incremental return off and on would be lost to Com
21 Ed. It would never be recovered and, in addition,
22 Com Ed would face significant uncertainty about its

1 ability to recover the smart grid investment to
2 begin with.

3 The third thing Rider SMP does is it
4 establishes concrete consumer and regulatory
5 protections. Now one of them I have talked about
6 already I'm going to talk about a lot which you hold
7 the keys. Nothing gets done unless you approve the
8 project, but it also contains an earnings cap
9 modeled after the structure that is in place in the
10 water incremental investment riders that insures
11 that none of those streams of recovery of
12 incremental return off and on can cause Com Ed to
13 over-earn. There is no way Rider SMP can cause Com
14 Ed to over-earn.

15 The question is simply is Com Ed going
16 to under-earn because it's being asked to make
17 significant technology investments that benefit
18 customers.

19 Now why is the rider critical? It's
20 critical because it allows Com Ed to explore and
21 where the Commission agrees, actually deploy new
22 technology that can transform the nature of the

1 utility business and bring huge benefits to
2 customers.

3 Those benefits are acknowledged by
4 witnesses for virtually every party in this case.
5 It includes witnesses for the staff, witnesses for
6 CUB, even witnesses for some of the people that
7 object to the rider acknowledge the tremendous
8 benefits that rider -- that rider brings about that
9 smart grid can bring.

10 Because those projects are new
11 technologies and would require significant
12 forward-looking investment beyond that that Com Ed
13 would otherwise make, they create intractable
14 problems, intractable risk for Com Ed if it was
15 forced to invest on UE under a full (phonetic)
16 backward regulatory model which we don't know what
17 we are going to recover, but we do know we are not
18 going to recover a earning off and on for a while.

19 Indeed, because of Com Ed's
20 extraordinary weak financial condition compared to
21 other utilities and because of investment
22 constraints of the company, Com Ed would be unlikely

1 to be able to make these investments at all without
2 your reviewing them up front and giving Com Ed
3 direction.

4 The bottom line is this. Rider SMP
5 allows you to provide certainty and direction and to
6 allow Com Ed to recover its reasonable and prudent
7 costs. We think that is a beneficial thing for
8 consumers, as well as being fair to Com Ed.

9 What then should the Commission do
10 relative to the proposed order? We ask the
11 Commission to do three things: First, we ask the
12 Commission to revise the proposed order so that
13 Rider SMP does not have to be litigated all over
14 again.

15 With all due respect to Yogi Berra, to
16 do it all over again is kind of funny, but it's not
17 good regulatory policy. There's a complete rider in
18 this case -- a complete record in this case about
19 the rider and Com Ed is not asking you in this case
20 to approve the programs. There is no reason to
21 require this debate that we're having today all over
22 again about the mechanism.

1 Second, the rider should not be limited
2 in advance to AMI Phase 0. If you and the
3 Commission decided that's all you want to proceed
4 with, Rider SMP rests with you that authority.
5 Nothing goes forward without you approving it, but
6 if you tie up the rider and limit it to Phase 0 of
7 the metering infrastructure in the terms of the
8 rider, that tool is lost to you and you won't be
9 able to use it and we won't be able to use it to
10 deploy anything else. Even if you were to decide
11 that those technologies would be good, the tools
12 should be free for you to use as you see best.

13 And, third, we have got a couple of flow
14 charts here and they're just illustrative. The
15 proposed order recommends, I think fairly, quite a
16 complex system of generic workshops, rate
17 re-filings, and particular workshops, all of which
18 on that chart occur before we get to the Com Ed
19 proposed SMP workshop or process.

20 I'm not going to question the value of
21 generic proceedings. There may be a place for them.
22 The company doesn't think they're as important, but

1 MR. RIPPKE: Yes. If you'll permit me what I
2 hope is an illustrative example, let's say you were
3 to invest a hundred dollars in a smart grid project
4 and that investments were to occur on a project.
5 For example, that started on the first cycle and
6 would be made in 2009.

7 Without Rider SMP, as Com Ed is
8 investing that hundred dollars, there's a cost to
9 that capital. That's an incremental investment. We
10 are going to have to get it from somewhere and that
11 cost that you are allowed rate of return is going to
12 be something between 11 and \$12. Let's say \$11.
13 That money will never be recovered.

14 What Rider SMP says is we are going to
15 let Com Ed recover that \$11 subject to two important
16 things, actually three important things, but one
17 we're not going to let that \$11 recovery let Com Ed
18 over-earn. If Com Ed's going to over-earn, earn
19 more than it's allowed to return, it's pat.

20 Second, we are not going to let Com Ed
21 add more than 5 percent to the total distribution
22 charges. That's another level of protection, and,

1 third, we are only going to let Com Ed do that
2 subject to an after-the-fact review of the prudence
3 and reasonableness of that hundred dollar
4 investment.

5 If it turns out we invest a hundred
6 dollars and could have done it for 90, there's an
7 after-the-fact review proceedings when you get it to
8 look at the basic point I want to make,
9 Mr. Chairman, it's not the hundred dollars.

10 The remaining portion of the investment
11 will get put into rate base whenever the company
12 files its next general rate case.

13 What this rider does is provide its
14 regulatory certainty that is it allows you to tell
15 us that this is a project you want done and it
16 allows you to get cost recovery, because frankly,
17 otherwise, the best we can do is break even and we
18 will probably lose, and the company's not in any
19 financial position to undertaking investments like
20 this under that circumstance.

21 CHAIRMAN BOX: Appreciate it. Thank you.

22 Staff.

1 ORAL ARGUMENT

2 BY

3 MR. FOSCO:

4 Good afternoon, Chairman,
5 Commissioners. Carmen Fosco again on behalf of
6 staff.

7 The proposed order decision on Rider
8 SMP is a multi-part ruling that approves Rider SMP
9 for the sole purpose of implementing what is called
10 Phase 0 deployment of AMI the funds to generally
11 adopt Rider SMP at this time provides for workshops
12 to consider the various issues concerning smart grid
13 planning, deployment, followed by the adopted
14 proceeding by the Commission to adopt smart grid
15 policies and directs Com Ed to re-file its request
16 for Rider SMP for a proposal what it calls Rider SMP
17 smart grid following the smart grid planning docket.

18 Staff supports the proposed order --
19 the general findings of the proposed order. We
20 think that the proposed order sets forth a
21 reasonable plan to consider smart grid issues and to
22 consider rider recovery for smart grid costs and

1 appropriately finds that it's not appropriate at
2 this time to approve rider recovery. I will cover
3 these points individually.

4 Staff agrees with the proposed order's
5 decision to decline to exercise the Commission's
6 discretionary authority to approve Rider SMP as
7 proposed by Com Ed.

8 The proposed order correctly notes that
9 the Commission has the authority to approve riders
10 under appropriate circumstances but then further
11 notes that to do so must be based on particular
12 circumstances.

13 The proposed order then goes on to find
14 that the Commission must first determine how smart
15 grid should be deployed in Illinois and then
16 determine to what extent it's necessary to improve a
17 particular cost recovery mechanism.

18 As staff interpreted the order, the
19 proposed order, it correctly finds that the problem
20 with Com Ed's proposal is that it's very -- its
21 rider proposal is that it's very vague on the
22 specifics of smart grid deployment that will take

1 place.

2 Yes, staff recognizes there are great
3 potential benefits to adopting the smart grid. Yes,
4 we paid attention to your directions to us in
5 Peoples that you want to consider system
6 modernization, and we took a much different view of
7 the rider proposed in this case, but having said
8 that, basically any proposal that could be said to
9 benefit the network could be an SMP proposal as
10 proposed by Com Ed. Even though the Commission
11 would have the right, as Mr. Rippie pointed out, to
12 review that, we don't think that's an appropriate
13 basis to consider rider approval.

14 In addition, we did have some testimony
15 pointing out that there are other mechanisms to
16 address the regulatory lag issue. Now we didn't --
17 we're not saying that that has to be the case in the
18 future once we get to a point where we have a more
19 specific proposal, but, as earlier discussed, the
20 company could have a future test year that would
21 address some of the regulatory lag, and I guess I
22 would point out that every rate base investment is

1 subject to this regulatory lag.

2 If Mr. Rippie's arguments were taken at
3 face value, every rate base investment would need to
4 go through a rider and every case where they made an
5 investment they would have to wait for the next rate
6 case to recover that.

7 So the real issue is whether there are
8 appropriate benefits to smart grid deployment that
9 justify and necessitate rider recovery and that
10 staff's view is that it's -- you know, you want to
11 consider that. We think the process that -- the
12 proposal proposed earlier will allow that.

13 We do have some minor disagreements
14 with the proposed order and we do also have numerous
15 modifications. One of our disagreements is that the
16 proposed order criticizes the parties for addressing
17 the sort of rate base versus rider recovery and in
18 terms of whether it's appropriate to recover smart
19 grid costs, and I think that the proposed order
20 misinterprets staff's position in this regard.

21 While, obviously, it wasn't part of the
22 proposed order decision to decline Rider SMP, the

1 proposed order states that there was an
2 inconsistency by parties contending that the minimum
3 service requirements issue might be an obstacle at
4 the same time not at what the proposed order said
5 was not objecting to base rate proposal.

6 I just have two points. When staff
7 made this point, staff witness Linkenback, he was
8 only making the point that Com Ed has admitted that
9 it's not necessary to meet the minimum service
10 requirements and his point was that, therefore, we
11 need a special showing of need and, obviously, there
12 is something then that interpret requirements that's
13 not in this issue.

14 When you go beyond that, you must weigh
15 the cost and benefits and demonstrate need. That
16 was the only point Mr. Linkenback made in this
17 testimony; and then secondly there was no proposal
18 in this case to recover these costly base rates, so
19 the fact that staff didn't oppose that doesn't
20 surprise me because it wasn't an issue, so I think
21 the proposed order just sort of misreads the
22 evidence on that point.

1 We do agree, however, that the issue
2 of whether particular costs are appropriate for
3 recovery is the statute not directly related to the
4 issue of rider recovery.

5 Staff agrees with the proposed order
6 decision to approve Rider SMP from Phase 0 with the
7 conditions that Phase 0 for AMI is clearly
8 identified as a pilot for an external program that
9 can and will be used in the workshop and docket
10 process that the proposal lays out.

11 In staff's view, it makes no sense to
12 approve Phase 0 if we're not going to be able to use
13 the information that comes from the sort of partial
14 deployment of AMI to consider when we think about
15 smart grid, so we made the distinction in our brief
16 on exceptions that if the intent was simply to sort
17 of approve the first phase of full deployment, then
18 we don't support that because we don't think the
19 record supports full deployment at this time

20 We do, however, agree that Phase 0 was
21 okay if it will be used in the workshop process. In
22 that same regard, we also agree, I believe it's at

1 Edison's request, that if that's the basis on which
2 it is approved, then we don't have a question
3 regarding the prudence of undertaking that
4 investment for that purpose. We think it's
5 reasonable to have a pilot program to get necessary
6 information, consider smart grid issues in Illinois.

7 This also means though that there had
8 to be a change to the workshop process outlined in
9 the proposed order.

10 It will take seven months --
11 according to the testimony, it will take seven
12 months to deploy your meters and then after the
13 meters are deployed which obviously gather some
14 information about their impact to have that to use
15 in the workshop.

16 So the one year time line that the
17 proposed order sets forth staff does not see how
18 that can be adequate to consider Phase 0, so we
19 propose that there be a two year time line instead
20 of one year time line.

21 COMMISSIONER O'CONNELL-DIAZ: What's the cost of
22 that?

1 MR. FOSCO: The record indicates it will cost
2 roughly \$60 million.

3 COMMISSIONER O'CONNELL-DIAZ: What happens if
4 after those meters are deployed and we don't do
5 anything else with the rider or we don't get to the
6 phase I'll call it Phase I?

7 MR. FOSCO: We do approve -- staff supports Rider
8 SMP for Phase O, which means the company would
9 recover their return on and off that investment
10 until its in rate case and they can put it in. We
11 would still have the reconciliation proceeding to
12 look at the reasonableness of the actual costs
13 incurred and they would recover those costs. There
14 would be nothing about the rider sunsets to prevent
15 them from fully recovering all those costs until
16 they can put it in the next rate case.

17 COMMISSIONER O'CONNELL-DIAZ: I believe that
18 answers the question.

19 MR. FOSCO: They would recover those costs, maybe
20 not the full \$60 million, because it will be
21 depreciated down to the 40 million by the time it
22 gets to the next rate case.

1 Staff also recommends that certain
2 clarifications be made to the workshop and docketed
3 proceeding. One of those is that Com Ed should be
4 required to basically report to the workshop the
5 results of Phase 0. The order -- these are not so
6 much criticism but exceptions to just
7 clarifications.

8 We think that the final order which
9 this Commission enters should specifically direct
10 Com Ed to provide the results of Phase 0 to the
11 workshop participants.

12 The proposed order should also make
13 clear that we're talking about a statewide process
14 to consider smart grid issues with the utilities to
15 fund a facilitator and we also agree that the list
16 of topics that were specified in the proposed order
17 for the workshops should be expanded a little bit to
18 consider demand-side tariffs that could take
19 advantage of demand side responses and their focus.

20 COMMISSIONER O'CONNELL-DIAZ: By nature of the
21 workshop --

22 MR. FOSCO: Well, the workshops themselves would

1 not be binding, but the end result of the workshops
2 would be a recommendation to the Commission for
3 adoption. So in that docketed proceeding we would
4 proceed with whatever the Commission's order in that
5 proceeding would be binding on the Illinois
6 utilities. The proposed order then provides for
7 Com Ed to file a revised rider based upon what comes
8 out of the workshop docket, so we don't know what
9 that would be today.

10 If the Commission decides a significant
11 smart grid investment is appropriate, we can assume
12 that Com Ed would propose that as well as a rider to
13 address that and would address the rider issue and
14 hopefully we have the cost benefit information to
15 make a full determination about whether the rider
16 recovery is appropriate.

17 On the rider recovery, I guess I do
18 want to distinguish that from some of the others
19 that are opposed to the rider. We do feel that some
20 of the safeguards that the company has agreed to do
21 resolve at least some of the legal issues but still
22 leaves issues.

1 For instance, we think that the
2 earnings cap is one way to address concerns about
3 single-issue ratemaking. Parties have said it's not
4 perfect, and that may be true, but we think from a
5 legal perspective that would allow you discretion to
6 approve a rider if they were considered.

7 COMMISSIONER O'CONNELL-DIAZ: That's before the
8 Commission this particular rider the Commission
9 would look at before any project is given the go
10 ahead that we would look at and additionally we
11 would also approve any money that is spent on a
12 project-to-project basis?

13 MR. FOSCO: True, but staff's main concern with
14 the current rider is that there was not a firm
15 definition of smart grid projects and It was very
16 broad.

17 COMMISSIONER O'CONNELL-DIAZ: Is there a
18 definition of the smart grid out there? I go
19 everywhere and I know we have collaboratives going
20 on.

21 MR. FOSCO: That's probably what we thought would
22 be addressed in the workshops. We did make some

1 alternative recommendations in our briefs. We did
2 say if the Commission were inclined to approve the
3 rider, we would set forth a list of conditions or
4 changes that should be made to Com Ed's proposal and
5 one of them was to either specify that the workshop
6 addressed that issue, or I think we referred to the
7 definition of smart grid in the EISA Act, the
8 Federal Act. I think that was another alternative
9 we put forth that would work. Those were our
10 alternative positions. We think the best thing to
11 do is discuss those issues with the workshop.

12 I see my time is up so if there are no
13 questions --

14 CHAIRMAN BOX: Any further questions?

15 (No response.)

16 MR. FOSCO: Thank you.

17 CHAIRMAN BOX: Moving on to the Attorney General,
18 Ms. Lusson.

19 ORAL ARGUMENT

20 BY

21 MS. LUSSON:

22 Thank you, Chairman. Good afternoon,

1 Commissioners. My name is Karen Lusson and I am
2 here on behalf of People of the State of Illinois
3 from the Attorney General's Office.

4 Today Com Ed in the proposed order
5 endorsed and approached the system modernization
6 that's akin to remodeling a house without a
7 blueprint or a budget but still sending a bill
8 requiring payment.

9 Imagine a foundation being poured and
10 the addition being framed with no clear
11 understanding or description from the contractor of
12 the construction standards to be applied, whether it
13 will improve the perceived problems in the house or
14 how much the project will cost ultimately.

15 The contractor, however, is saying one
16 thing and he has the captive funding so you are
17 approving the installation of 200,000 meters,
18 expecting ratepayers to pay for Rider SMP without a
19 clear blueprint plan for smart grid as being laid
20 out. It is the regulatory equivalent of that I'll
21 define house remodel.

22 With Rider SMP, Com Ed seeks nothing

1 less than to radically alter the way infrastructure
2 modernization is financed.

3 The record evidence shows Com Ed failed
4 to prove a need for such extraordinary
5 pre-approval on rate recovery for plant. It can and
6 should be recovered as a rate base investment if the
7 company deems it prudent. We hope you will withhold
8 pre-approval of Phrase O. The more responsible
9 approach is in a collaborative proceeding before any
10 ratepayer money is promised.

11 There are at least five reasons why we
12 believe the Rider SMP should be rejected. First,
13 the company's uncertainty about AMI and the other
14 Rider SMP projects don't justify a change in the way
15 utility plant is incorporated in rates.

16 For more than a hundred years Com Ed
17 has made investments, financed them through
18 internal-generated funds in the capital market and
19 then filed the rate case to have those investments
20 including in rate base when it needed more revenue
21 to recover its costs.

22 Now Com Ed's argument in this case, as

1 Mr. Rippie referred to this, that they don't like
2 the uncertainty stemming from this process and that
3 it lacks confidence that its investment will be
4 deemed prudent and placed into rate base.

5 The company stated that throughout this
6 case that the SMP project, including Phase O, are
7 discretionary. That's the word they use,
8 "discretionary," and not -- quote, not necessary for
9 the provision of safe and reliable electric
10 distribution service.

11 Rather than justifying automatic rider
12 recovery, we think that information supports our
13 view and that view of many other parties that
14 pre-approval is a bad idea. Perhaps the real source
15 of Com Ed's uncertainty is not rate recovery but the
16 substance of the investments themselves.

17 Com Ed withdrew its request for
18 specific project approval again which Mr. Rippie
19 mentioned at the end of the case. Recognizing that
20 there just are too many unknowns and controversies
21 in terms of cost benefits and engineering standards
22 associated with this technology, instead it seeks

1 approval of the funding, at least at the end of the
2 case it sought approval of only the funding rider.

3 If the company is uncertain what these
4 investments would be and what they would cost you as
5 regulators, why should you as a regulator allow them
6 to proceed with ratepayer money and guaranteed and
7 then with ratepayers assume the risk of that
8 investment. That's simply not good regulatory
9 policy.

10 The second reason the rider should be
11 rejected is because rider treatment will shift cost
12 to ratepayers while allowing shareholders to keep
13 the benefit Rider SMP pre-approval of ratepayer
14 funding eliminating the incentive that the company
15 has to invest prudently, which it always had under
16 traditional format, and it's inherent in the
17 existing rate base plant recovery process, and why
18 is that, because by getting advance prudency funding
19 the ratepayer financing before they're proven use
20 and useful, the company has less of an incentive to
21 make sure that that is good investment that it is
22 prudent, that they're spending the right amount of

1 money on it.

2 COMMISSIONER O'CONNELL-DIAZ: Ms. Lusson, does
3 the reconciliation proceeding, as well as the
4 earnings cap, kind of ameliorate that problem?

5 MS. LUSSON: No. We don't think it does for a
6 couple of reasons. First of all, people call it an
7 earnings cap. During the cross-examination, the
8 company agreed it's not really an earnings cap.
9 It's an earnings test, but there are all sorts of
10 problems with that earnings test.

11 First of all, unlike a rate case where
12 the staff is able to review all of the company's
13 data through the Paragraph 285 filing, all of those
14 schedules, A, B, C, D, E, I believe, F, reams and
15 reams of information, the company is talking about
16 filing on an annual basis a FERC Form One document
17 about that big (indicating).

18 In that document are areas where the
19 company has the ability to make -- report certain
20 accounting numbers that, in fact, are open to
21 certain amounts of subjectiveness.

22 Com Ed witness Husma (phonetic) agreed

1 with us on that point. In other words, one of the
2 -- one of the areas that is very much open to
3 subjectivity in that filing is that the company
4 would remove, quote, large non-recurring charges or
5 credit for the purposes of calculating net operating
6 income in a given year.

7 Well, Ms. Husma concurred that there's
8 a significant amount of judgment that goes into how
9 that earnings is calculated and whether or not
10 something is a, quote, large non-recurring charge or
11 credit.

12 COMMISSIONER O'CONNELL-DIAZ: Wouldn't in the
13 reconciliation everyone have an opportunity to look
14 at what those costs are and contest anything that is
15 not appropriate before flowing through to the
16 customer?

17 MS. LUSSON: Well, it involves the reconciliation
18 of costs, but, in our view, and, in fact, when we
19 asked Mr. Crumrine who was the witness said this
20 will be the thing that protect ratepayers this
21 earnings test or earnings cap process.

22 When I cross-examined him on it, he had

1 no specific knowledge of any of the accounting
2 entries in that form, so --

3 COMMISSIONER O'CONNELL-DIAZ: I'm not asking
4 about reconciliation proceedings. That would take a
5 look at what the project is.

6 MS. LUSSON: That will involve staff and
7 interested intervenors reviewing the dollars spent
8 on the project, yes.

9 That leads me into my third point as to
10 why I think this rider should not be approved is the
11 administrative burden associated with that rider.

12 Com Ed's plan as we know was created
13 with administrative appeals, and then, as I
14 mentioned, it involved FERC form one.

15 Again, while the company admits this
16 will leave considerable room for subjective
17 financial reporting, it promises to create what we
18 think are going to be mini rate cases in and of
19 themselves with the Commission considering whether
20 or not the company's over-earning.

21 It's important to note to that
22 Commonwealth Edison in testimony stated that they

1 will be filing rate cases on a regular basis, both
2 Mr. McDonald indicated that and Mr. Mitchell that
3 they will be filing a report to the SEC, so staff
4 and intervenors are going to be in the unenviable
5 position of having to do constant rate cases, and
6 reconciliation proceedings, and examining whether or
7 not the company is over-earning.

8 Another reason why the company's rider
9 should be rejected is that the company failed to
10 prove a financial need for the rider. Staff and
11 consumer witnesses agreed on this point that the
12 company did not prove financially. The evidence
13 shows that technology investment can and does occur
14 without extraordinary rate-paying riders.

15 First of all, staff testified that the
16 lag time between the investment and recovery rate is
17 no greater than any other capital investment,
18 especially if we know, as Com Ed has testified, that
19 it plans on coming in on a regular basis is much to
20 our chagrin for rate increases.

21 Today, again, Com Ed successfully
22 modernizes its network without a rider. It's been

1 investing hundreds of millions of dollars in the
2 normal course of business again without a cost
3 recovery rider.

4 Com Ed's Part 285 filing made clear
5 that in the 2002 through 2002 time period
6 internally-generated funds from operations were
7 sufficient to fund dividends to the parent in all
8 but 2006 while construction levels ranged from \$712
9 million to 910 million.

10 Now comparing that with what Com Ed
11 says Phase O will cost about \$60 million, again, and
12 these are cost estimates, not certain dollars,
13 but --

14 COMMISSIONER O'CONNELL-DIAZ: How much do you
15 think this will be the figure by the time you are
16 done?

17 MS. LUSSON: According to Com Ed, yes. According
18 to Com Ed's plan, yes, you, the Commission don't
19 have to necessarily -- Com Ed's view as to how smart
20 grid should be invested in the rates certainly the
21 rate as at which it should be invested.

22 Rider SMP -- if the project cost \$60

1 million, that would generate under Rider SMP about
2 \$9 million, so if you compare that \$9 million with
3 the \$900-plus million that they spent in 2006 in
4 construction expenditures and where the \$60 million
5 that Phase 0 would cost, it's an apples-and-oranges
6 comparison. There simply isn't a financial need for
7 this rider and then there is the problem of
8 single-issue ratemaking, again, the rider would
9 raise customer bills for one and ten times in
10 isolation and this case it would be the financing of
11 Phase 0. That is in single-issue ratemaking.

12 The second issue I wanted to address is
13 that is the capital budget for Com Ed Rider SMP.
14 Now the other problem with the rider is that the
15 rider does not reflect savings. Com Ed has in its
16 business case if you look at the oral argument
17 exhibit --

18 COMMISSIONER FORD: Ms. Lusson, I guess my
19 confusion is that the direction of the Federal
20 Policy Act said we must begin to -- the state must
21 begin to consider the smart grid topic.

22 MS. LUSSON: Sure. We encourage the state to do

1 that, absolutely. We believe a collaborative
2 proceeding should be held.

3 COMMISSIONER FORD: And that should be finished
4 by December 19, 2009, so that is I think the process
5 that we're beginning to look at and investigate, and
6 I think to move forward with this is one of our
7 federal policies. That's why I'm concerned the AG
8 would not be on board with this.

9 MS. LUSSON: We agree, in fact, that a
10 collaborative proceeding should move forward. We
11 just don't think the Rider SMP should be adopted.

12 If you look at the statements that
13 Com Ed believes that will occur, the problem is this
14 rider will not pass any of these savings on to
15 ratepayers. Again, the Com Ed answer to that is,
16 well, that's not a problem because we have this
17 revenue test or earnings cap as part of the
18 reconciliation proceeding, but, again, that is
19 deficient. It actually becomes a little mini rate
20 case and traditional method of financing plant just
21 is a better approach because you then can examine
22 the costs, determine if they're prudent and that it

1 is just a superior way to do it and that's --

2 COMMISSIONER O'CONNELL-DIAZ: How would that be
3 better than specifically looking at a project as
4 opposed to having it buried in a rate case where it
5 could probably get short shift.

6 Are you suggesting that staff is not
7 able to make those -- that analysis in the
8 reconciliation proceeding on a yearly basis --

9 MS. LUSSON: I'm suggesting --

10 COMMISSIONER O'CONNELL-DIAZ: -- or any other
11 party that would like to?

12 MS. LUSSON: I'm suggesting that traditional
13 regulation works best. Traditional regulation works
14 best because it gives the company incentives to
15 invest prudently and it does -- and that works that
16 way because they will get compensated for that
17 investment when they file a rate case and it's
18 declared used and useful and it's put into rates and
19 earn a return on that initial investment.

20 COMMISSIONER O'CONNELL-DIAZ: I'm missing the
21 distinction, a different method of doing the
22 accounting so that those costs would flow through

1 once there's a determination is made that it was a
2 prudent investment and it should be flowed through
3 the customer and that's what the purpose of that
4 type of rider recovery is implying. Why do think
5 it's a better situation than that.

6 MS. LUSSON: The reason it's a better situation
7 because of regulatory lag and it gives -- as I said,
8 it gives the utility -- and the utility's in the
9 best position to analyze the investment. They can
10 evaluate the risk, select the technology, and
11 vendors, manage construction activities, and control
12 costs, and they're compensated for their risk. That
13 is a part of the revenue requirement calculation.

14 Ratepayers are not in that position.
15 We don't have access to capital funds. Ratepayers
16 don't have the expertise to make decisions about
17 investments. Essentially, the responsibility for
18 the investment is being shifted. The risk is being
19 shifted to ratepayers and, in a sense, to you, the
20 regulators. They're saying you approve the project
21 and, you know, then we have got the advance prudent
22 all system smart grid to go.

1 That shouldn't be your role. Your role
2 the utilities. It's the utility's job to determine
3 what constitutes a prudent and efficient investment.

4 COMMISSIONER O'CONNELL-DIAZ: Any time they're
5 assuming there was a rider out there, the Commission
6 could rule the rider at any point in time, couldn't
7 they?

8 MS. LUSSON: I'm sorry?

9 COMMISSIONER O'CONNELL-DIAZ: The Commission
10 would have authority to cease the rider and send the
11 company in if there was something awry in the
12 financial end of the project or any modality that we
13 have approved; isn't that correct?

14 MS. LUSSON: The Commission could cease a rider
15 but we don't want you to go down that road. We
16 don't think you have the authority to grant it in
17 the first place.

18 COMMISSIONER O'CONNELL-DIAZ: I think that's kind
19 of the rider issue. I'm not getting into a
20 discussion about that because I have a different
21 opinion.

22 I think the Commission's order in

1 several cases, but in order to comply with federal
2 law, when are we suppose to start doing this? I'm
3 missing, and I think your argument is at minimum
4 it's okay for Illinois that we should not be moving
5 forward with regard to these smart grid
6 technologies. Smart grid -- is it because I think
7 we're not as smart about it as we should be and
8 we're really on a learning curve?

9 The mandate from the federal government
10 to get going, so the company chose to a rider to
11 effectuate that. It calls for a workshop process.
12 It's not going to be just the company deciding this.
13 The Commission has oversight. Parties have input.
14 How do we get the balloon off the ground?

15 MS. LUSSON: A couple of points in response.
16 The federal law says the Commission should
17 investigate and should investigate by December of
18 2009. Absolutely, we agree. We agree that, you
19 know, we are not attempting to endorse any sort of
20 lubric position here. We are as interested in
21 technology as anyone. We think there's a way to do
22 it and there's a wrong way to do it.

1 The process that Com Ed has set up we
2 believe is extremely complex, violates the law and
3 sort of hands you the responsibility for determining
4 what's prudent and it changes the entire regulatory
5 compact.

6 COMMISSIONER O'CONNELL-DIAZ: It's prudent on a
7 regular basis. Why is this any different?

8 MS. LUSSON: But you are required to give
9 pre-approval to this Phase O when we have costs and
10 benefits that are -- if I could find the quote this
11 is how Com Ed has described the costing benefits
12 analysis.

13 First of all, Com Ed witness Sally
14 Clair indicated that she could not guarantee that
15 these numbers weren't going to stay the same. The
16 cost again is estimated at
17 \$60 million, but she testified that this is only at
18 the request for information stage, the RFI stage.
19 To get solid numbers, you need to go to the request
20 for proposal stage, the RFP stage. That hasn't been
21 part of this docket. So we were a bit perplexed
22 when the proposed order said smart grid is

1 uncertain, the costs and benefits are uncertain, but
2 the Phase 0 numbers look good. That just isn't the
3 case. The record doesn't support that.

4 For example, again, it's at the RFI
5 stage. She couldn't guarantee the cost wouldn't
6 change and the cost she indicated to change is based
7 on the functionality requirements and the
8 engineering specifications that are requested, so
9 depending upon if you want 15-minute increments of
10 information or 30-minute increments of information,
11 that all changes the dollar figure. Also, those
12 numbers did not include necessarily it costs in
13 them, so there are all sorts of uncertainties
14 associated with this cost benefit analysis that
15 don't enable you to actually say this Phase 0
16 project is prudent.

17 In their brief on exceptions the
18 company said -- one of the things they indicated
19 from the proposed order that they disagreed with was
20 that there needed to be -- needed to be added to
21 the proposed order needed to be some conclusion at
22 Phase 0 that Phase 0 was prudent, and to that extent

1 the company is right, the problem is you would have
2 to make the conclusion that Phase O is prudent.
3 This record doesn't allow you to do that. There are
4 just too many uncertainties associated with the
5 costs and the benefits.

6 COMMISSIONER LIEBERMAN: I guess I have two
7 questions. One is just sort of informational.
8 Listening my colleague has to catch a plane --

9 COMMISSIONER FORD: Sorry.

10 COMMISSIONER LIEBERMAN: Three of us are having
11 so much fun.

12 The prudency question my understanding
13 what Mr. Rippie just said I thought was that the
14 prudency question when they came to put the money in
15 the rate base the Commission could determine
16 prudency at that point that in the rider they
17 were --

18 MS. LUSSON: That's not what they said in the
19 testimony. This rider --

20 COMMISSIONER LIEBERMAN: Did I misunderstand
21 hert?

22 MS. LUSSON: Rider SMP requires you -- because

1 here's the problem. You are starting to assess
2 charges to ratepayers for plant that isn't yet
3 proved to be prudent used and useful. That's
4 against the Illinois law.

5 Now you talk about wanting to fulfill
6 the investigation requirements of the EISA. I know
7 you are concerned with that, but that law, just to
8 be clear, does not say you have to start at the
9 point of the smart grid, and you do have an
10 obligation. In addition, to studying this, you do
11 have an obligation to follow Illinois law on how you
12 incorporate plant investment into rates.

13 COMMISSIONER LIEBERMAN: Let me ask you one other
14 question just quickly. There does seem to be a lot
15 of testimony about potential benefits and the scale
16 of the potential benefits, and I didn't really see
17 people disagreeing about the potential benefit of
18 doing this.

19 I mean, to the extent that this is
20 framed as a pilot, that is a learning exercise, and
21 to understand it so that all of us can get
22 information as to how this would work in the future

1 and to reduce the uncertainty around what those
2 benefits might be in the future, does that give it a
3 different tone to you as a pilot?

4 I mean, I understand the SMP. I
5 thought the discussion of what the benefits of the
6 smart grid was fuzzy frankly, but the concept of the
7 pilot, the concept of learning, the concept of
8 understanding, so we all have a better sense, it
9 struck me as having potential if you could comment.

10 MS. LUSSON: You know, obviously there's a
11 purpose for pilots. It's a similar experience. You
12 look at the results. The schedule laid out in the
13 proposed order doesn't allow you to do that.

14 Secondly, you still have that problem
15 of charging ratepayers for that pilot for an
16 investment that hasn't been proven to be prudent
17 used and useful, and that's the big hurdle here, and
18 let me just add in the AARP testimony, Mr. Ralph
19 Smith indicated that in Colorado -- first of all,
20 Com Ed, as I said, invested 900 -- and I believe
21 it's 916 million in investments in 2006 construction
22 expenditures. Here we are talking about Rider SMP

1 generating \$9 million.

2 Now keep in mind you are about to raise
3 this company's rates considerably based on new
4 revenue requirements set. That's a new cash flow
5 source, and getting back to Mr. Smith's testimony,
6 what happened in Colorado is after a collaborative,
7 the company utilities got together and explored
8 other funding sources.

9 If this company is uncertain about
10 these projects, and they are, clearly because
11 they're asking you to change the way you incorporate
12 plant into rate base, then it should explore other
13 funding sources, but it has the ability, it has the
14 capital, unlike ratepayers, to do that. It can go
15 to the capital market. It can use
16 internally-generated funds. There's -- it's apples
17 and oranges in terms of who has the ability to fund
18 smart grid, the ratepayers or Com Ed, especially
19 when you are talking about project Phase O. They're
20 talking about collecting \$6 million for Rider SMP.

21 I mean, comparing that with how much
22 they typically spend in construction expenditures,

1 it's a no-brainer.

2 COMMISSIONER O'CONNELL-DIAZ: Ms. Lusson,
3 wouldn't you suggest these are a little bit
4 different than ordinary construction costs that we
5 see in every rate case?

6 MS. LUSSON: Well, meaning the Phase O
7 investment?

8 COMMISSIONER O'CONNELL-DIAZ: Just the whole
9 thing. Ten years ago we didn't have smart grid
10 considerations. We do now, so there's a lot more
11 known about it and it is hard to get your arms
12 around what the projects would be, what their
13 collaborative would come up with, the projects that
14 should go forward, but that's why the design of this
15 particular rider gives the Commission authority to
16 look at it and give it a thumbs up, thumbs down
17 based on each project before any expenditure.

18 MS. LUSSON: But, again, I have to go back to the
19 fact they have proclaimed this project
20 discretionary, not necessary for the provisions of
21 basic electric service.

22 You have AARP standing here saying that

1 or actually I'm here on their behalf as well.

2 COMMISSIONER O'CONNELL-DIAZ: They use the term
3 "luxury." I think they use the term "luxury."

4 MS. LUSSON: Right. They represent a customer
5 class that may not be interested in anything beyond
6 basic service.

7 COMMISSIONER O'CONNELL-DIAZ: I guess I'm
8 interested in the future and the future that's good
9 for our state, and so unless we do some weird
10 pro-active things on policy considerations, I don't
11 know how we get to the other part of the coin.

12 MS. LUSSON: And just to respond briefly to that,
13 we are as interested in new technology as anyone.
14 Again, I'm not trying to be alevin.

15 COMMISSIONER FORD: I just want to interject that
16 I think I have said this before, but I remember the
17 Times Magazine -- no, the New York Times did a
18 survey and said that our infrastructure and
19 everything that we did was worse -- was Third World,
20 so when I see new innovations and new technology
21 that will benefit us, and you reference the fact
22 that it was 960 million, but you got to remember

1 that 960 million is construction due to liability
2 and that is what we had.

3 When I came on this Commission, Com Ed
4 came to us and said they were going to be reliable
5 and that is what I look for in electrical service
6 now.

7 You also reference the fact that people
8 -- I mean, without a foundation and under-earning
9 when you build a home you have a budget. Well, when
10 you have a budget, there's oftentimes overruns, and
11 I don't think there's been any construction in the
12 City of Chicago that there has not been an overrun,
13 and that is the reason I think they want to come in
14 and say we have this overrun, will you pay for it.

15 Oftentimes -- how much was the overruns
16 for Millennium Park? 400 million. If you come to
17 us -- if they had come to us, I'm sure we would have
18 not agreed to that overrun.

19 MS. LUSSON: I'm glad you mentioned the liability
20 because I think that's something that we need to ask
21 and explore in this collaborative proceeding. How
22 does smart grid fit into the concerns about

1 reliability? We don't know that yet. Com Ed wants
2 ratepayers to start financing it. There may be more
3 customer liability concerns if ratepayers would
4 happily incorporate into rates. If it's a prudent
5 investment, we don't know that.

6 Again, Com Ed is placing all of the
7 risk associated with these uncertain smart grid
8 technologies, which, again, are so ill-defined that
9 they're placing to it, on the backs of ratepayers,
10 the parties that can least afford to finance it.

11 CHAIRMAN BOX: Ms. Lusson, we are going to move
12 on. I have one question for. I'm trying to
13 distinguish between your argument that they're a
14 luxury or they're not needed, but if the company
15 would go ahead and make these investments and then
16 come in on the next rate case and include those,
17 would you say that was acceptable or that these are
18 luxuries or other things people can't afford it, not
19 least cost, so, therefore, it should not be
20 allowed?

21 MS. LUSSON: I think that's the beauty of
22 traditional ratemaking. The company makes an

1 investment. It does the assessment. This is a
2 prudent investment. Will we be able to recover
3 their rates when we come in for our next rate
4 case because it better be prudent or the
5 Commission --

6 CHAIRMAN BOX: I'm asking you wouldn't that be a
7 prudent environment for meters?

8 MS. LUSSON: It depends. We don't know yet.
9 we just don't know. We don't know enough about
10 Phase O. We don't know what the engineering
11 standards are going to be. We don't know where
12 this -- the experiments are going to occur and in
13 what portion of Com Ed's service territory. We
14 don't know the cost. That \$60 million figure again
15 is very, very -- Com Ed used the word
16 "illustrative." It's an illustrative figure. The
17 total figure is illustrative and the \$60 million is
18 a figure we don't know, so we don't know if it's
19 going to be prudent until they make the investment
20 and then you see what is used and useful.

21 And in terms of Commissioner
22 O'Connell-Diaz, I understand your point about

1 wanting to look to the future, but given what the
2 evidence in this case says that Com Ed -- and Com Ed
3 clearly admitted it up front, these investments are
4 beyond basic electric delivery service. They're not
5 necessary for the provisional electric delivery
6 service.

7 So given the definition that we have in
8 the Public Utility Act that rates shall reflect the
9 least cost, least cost reliable service, one of the
10 things that needs to be examined, and Mr. Stoller
11 stated this in testimony, staff really believes in
12 their testimony that one of the things that need to
13 be examined is whether or not that definition of
14 basic electric service needs to be changed. That's
15 certainly something that should be considered in a
16 collaborative proceeding, but you can't do it now
17 with the law that we have in Illinois and with the
18 definition of basic electric service you have.

19 COMMISSIONER O'CONNELL-DIAZ: I guess we could
20 sit all day and argue about that point. Isn't that
21 the essence of rider recovery there will be analysis
22 done by the Commission and, in this instance, the

1 analysis would be before a project is approved or
2 any money authorized to flow through to the
3 ratepayers? So how does that not work? Why is it
4 better in a rate case?

5 MS. LUSSON: It is better because with the rider
6 you are -- when you issue this order in September,
7 you are saying Phase 0 is prudent, and you can't
8 make that determination yet. You know what, Com Ed
9 can't make it. They weren't willing to make it,
10 which is why they came up with this rider proposal.
11 We are uncertain about the investment. We are not
12 sure that when we come to file a rate case that
13 we'll declare this used and useful and prudent, so
14 we have -- actually they use the word creative
15 funding source Rider SMP. Here it is. If you want a
16 smart grid, this is the way you are going to have to
17 do it. They sort of got the gun to your head saying
18 you want smart grid, this is the way we have to do
19 it. That doesn't have to be this case.

20 COMMISSIONER O'CONNELL-DIAZ: In a rate case, as
21 the Chairman asked, wouldn't you make the same sort
22 of claim with regard to this is not least cost, it's

1 not (sic) basic electric service? Why do it and
2 ratepayers shouldn't pay?

3 MS. LUSSON: Not necessarily. You mean if the
4 definition wasn't changed?

5 COMMISSIONER O'CONNELL-DIAZ: I mean, there's a
6 lot of unknowns and I accept your position it isn't
7 known as to what it would cost in the rate case that
8 the Chairman just asked you.

9 MS. LUSSON: Right. That's the beauty of
10 traditional regulation. It requires the company to
11 sit down and analyze, get RFPs, not FRIs, to
12 determine what is a good cost, what is a responsible
13 price for a project and all with the goal line in
14 mind of will this be declared used and useful. Some
15 day I will have to come to the Commission and have
16 this included in the rate base.

17 COMMISSIONER O'CONNELL-DIAZ: Well, it would be
18 some day. It would be every year they have to come
19 in I'm sure on cost expenditures before the project
20 was authorized. I still miss your point.

21 MS. LUSSON: The point -- thank very much.

22 CHAIRMAN BOX: Thank you.

1 Next will be BOMA, Building Operators
2 and Managers Association of Chicago, Mr. Michael
3 Munson, Mr. Munson.

4 MR. MUNSON: Pardon me, Mr. Chairman. It's the
5 Building Owners and Managers Association of Chicago.
6 I want to correct that for the record.

7 CHAIRMAN BOX: Building Owners.

8 MR. MUNSON: Yes.

9 CHAIRMAN BOX: That's what I thought.

10 MR. MUNSON: A hundred year old association.

11 (Laughter.)

12 CHAIRMAN BOX: We'll take care of that.

13 ORAL ARGUMENT

14 BY

15 MR. MUNSON:

16 Suffice it to say, we have a little bit
17 of a different view although we do suspect that
18 there's some prudent points here. I want to go back
19 to this really quick because the foundation for
20 smart grid. BOMA members span non-residential
21 customer classes, so we have got to be careful with
22 what we do from a policy perspective, from our

1 perspective, but the vast majority are contained in
2 the top three of those rate increases over time.

3 Now this exhibit was unrebutted
4 information is unrebutted as well. More egregious
5 are those commercial buildings that were all
6 electric even though everybody wants to kind of
7 sweep that under the rug.

8 Look at the record, look at our briefs
9 on that issue, because it was woefully discussed in
10 the order and didn't seem to really address the
11 issue or the evidence contained in the record, nor
12 did it address the potential discriminatory
13 treatment between why is it allowed for residential
14 customers. Clearly they're differentiated. There's
15 a cost-basis differential. Why is that different for
16 commercial buildings? Clearly though, regardless of
17 what you think, the cost of doing business in
18 Chicago or conducting non-profit opportunities, or
19 going to church in BOMA member buildings, in
20 churches, that has increased. That is a fact. That
21 has increased more than any other customer class for
22 those BOMA member buildings.

1 Now so why would we, as BOMA members,
2 support the adoption, even conditionally, of Rider
3 SMP in this case when we have been kicked around for
4 the last ten years? You know, well, a couple of
5 reasons. One we support the implementation of smart
6 grid because we think that the development is
7 crucial to attracting, retaining, and doing to
8 business in a city that is growing in international
9 focus and stature undeniably.

10 Besides with advances in this
11 information age, BOMA Chicago respects and
12 understands the rate base treatment issues and
13 submit though that this is going to happen anyway
14 through inertia.

15 Rider SMP simply provides a basis to do
16 it sooner rather than later and to do it right. We
17 are -- BOMA supports the recommendations by staff in
18 this to do a pilot, particularly when this is going
19 to cost a billion dollars of our money. Do it.
20 Proof it out. See what it is.

21 There's a couple of things that need to
22 really be clarified here. We have got to really be

1 careful because we have got to get a lot more
2 focused as we do this, we should do it right. We
3 need to separate out competitive functions, monopoly
4 functions, hardware, software.

5 We want Com Ed to provide the
6 infrastructure and do what they do best, install,
7 operate the distribution system, but stop right
8 there. Any value-added services, what the
9 information is suppose to be used by, that's where
10 the benefit of the smart grid is and that is not
11 housed in the monopoly utility.

12 We are saying that we need -- in the
13 order we need three things to clarify and there's
14 simply one is recognition that information is what
15 makes it smart. That is tantamount. The
16 information is the important point.

17 The second is we have very different
18 opinions on what specifications AMI is requiring.
19 We don't need that much -- we don't need that much
20 sophistication in the meter. Once you get the
21 information to the Internet, you have all the
22 sophistication ever available. You don't need it

1 housed at the meter. We need a reliable low cost
2 meter.

3 Okay. We can help determine what those
4 specifications are, and maybe that's not the right
5 solution, maybe it's something that requires some
6 control, but that's what this pilot process.

7 Third, BOMA Chicago has been out in front
8 of this issue. As a result of this, we are leaders
9 in energy efficiency. We are leaders in demand
10 response. We are very sophisticated customers and
11 don't be fooled by these other industries out here.
12 We want and we have requested how do we fix this,
13 how do we fix our discrepancy, because we are sure
14 not getting relief. No offense. We are not getting
15 relief from you guys either, so let's control our
16 own destiny and give us the information we need to
17 be able to compete in a competitive environment.

18 As such, we want to participate. We
19 want to participate in this pilot process and
20 participating will be a maximum up to 5 percent,
21 5 percent of the amount of meters that are set to be
22 deployed for Phase 0. We don't know what Phase 0 is

1 going to be. We know what we like it to be, and
2 that's here.

3 Now to respond to some issues on
4 that --

5 COMMISSIONER O'CONNELL-DIAZ: When you say
6 "here," you mean Chicago?

7 MR. MUNSON: Downtown business district.

8 COMMISSIONER O'CONNELL-DIAZ: What about collar
9 counties?

10 MR. MUNSON: They can participated, too. They
11 can be under 195,000.

12 COMMISSIONER O'CONNELL-DIAZ: I'm only joking.

13 MR. MUNSON: Commissioners, I think we can help
14 in the pilot process. We can help decide rigorously
15 what investments are prudent for those McHenry
16 County residents. I support providing it for
17 residential customers. I just want to do it right.
18 I want it right the first time.

19 So we are not asking for anything
20 special except to control our own destiny on that
21 issue. Why else do it down here? You need a
22 communications network. We already have one. It's

1 called the Internet.

2 Second, most buildings down here
3 already have smart grid housed within their
4 buildings. They're called building automation
5 system. You know an engineer can remotely access
6 perhaps this building and change the operations,
7 change the mechanical systems, change temperature
8 control points. There are open Internet protocols
9 already existing in the competitive market. We want
10 to combine that. The only thing that these
11 engineers are missing is access to their own
12 information to be able to make efficient decisions.

13 Today we have got to buy an interval
14 meter that comes once a month. That's one of the
15 reasons we support these meters. You are not
16 necessarily sure what you are going to get, a half
17 hour. It's not very robust.

18 We want to participate and require that
19 whatever infrastructure that Com Ed comply with
20 their own rules, their own chosen RTO/PJM rules for
21 demand response.

22 Let me just put on just this --

1 CHAIRMAN BOX: You are way over your time.

2 MR. MUNSON: Well, let me make this final point
3 if I may.

4 CHAIRMAN BOX: You are infringing on
5 Mr. Townsend's minute.

6 MR. TOWNSEND: I'll have to speak even more
7 quickly.

8 MR. MUNSON: Now the important point is this.
9 Here's why I think it is the most important reason
10 to do this. This is a supply curve, fairly famous
11 supply curve graph. No one really disputes this
12 concept. Bottom is quantity, load, load increases,
13 price increases, and in the PJM area of Com Ed it's
14 the dispatch price of a unit, nuke, nuke (phonetic),
15 cold, cold, and then it takes a sharp turn when the
16 load gets really high in the summer.

17 The point is we are able to move the
18 load from Q to QDR, and this is explained in the
19 third attachment that you have in front of you, we
20 can gain the benefit that's contained in that
21 vertically shaded area.

22 The benefit to society is found in the

1 price reduction, the big piece, because we are
2 moving the price down. That's why people in McHenry
3 County should want to participate in this because we
4 have the ability or at least see if we have the
5 ability to affect price. Thank you.

6 CHAIRMAN BOX: Thank you. Next is Mr. Townsend
7 for REACT. You can proceed.

8 ORAL ARGUMENT

9 BY

10 MR. TOWNSEND:

11 Thank you, Commissioners. Thank you
12 Chairman Box.

13 (Laughter.)

14 REACT originally flat out opposed a
15 Rider SMP for many of the reasons that Mr. Box
16 identified about. REACT does not object to the
17 process that's set forth in the proposed order as
18 long as two additional issues are addressed in the
19 formal and informal proceedings.

20 First there should be recognition that
21 customers in the over 10 megawatt class previously
22 invested their own money in various types of

1 advanced technologies for which Com Ed now seeks
2 guarantee before the fact recovery of those costs.
3 No one disputes the fact that these customers have
4 incurred those costs and that the system already has
5 benefitted from them making that investment.

6 Second, the Commission should insure
7 that these new programs are not given an improper
8 competitive advantage to Com Ed or any Com Ed
9 affiliate. Those are two additional issues that we
10 believe should be addressed in the process.

11 We are provided with language in order
12 to be able to tweak the proposed order to include
13 those but so long as those are included we think
14 that the process set out in the proposed order is
15 reasonable. Thank you.

16 CHAIRMAN BOX: Thank you.

17 Chicago Transit Authority and Metra.

18 ORAL ARGUMENT

19 BY

20 MR. BALOUGH:

21 Thank you. Richard Balough appearing
22 on behalf of CTA and Metra, both of whom comprise

1 the railroad class.

2 We oppose Rider SMP both as filed by
3 Com Ed and as modified by the proposal for the
4 following reasons: One, Rider SMP originally
5 proposed starting to implement a smart grid before
6 the concept is fully defined.

7 Second, Rider SMP, as originally
8 proposed by Com Ed, allocates the cost of the system
9 modernization projects based upon demand rather than
10 allocating the costs based upon new benefits from
11 the system improvements.

12 Three, the railroad class does not
13 benefit from the projects proposed by SMP, and,
14 therefore, would be paying for projects for which it
15 receives no benefit.

16 Four, the review process proposed by
17 Com Ed would require multiple proceedings in which
18 the CTA and Metra would have to participate thereby
19 draining resources.

20 Fifth, the proposed order
21 implementation of Phase 0 does not benefit the
22 railroad class because at most only one meter would

1 be installed at either CTA or Metra facilities.

2 Sixth, the proposed order leaves until
3 the compliance filing such questions as how the cost
4 of Phase O would be recovered with no opportunity
5 for intervenor input.

6 As stated earlier, the CTA/Metra
7 provides mass transit service. The CTA is the
8 largest provider of mass transit in North America
9 and is one of the largest customers of Com Ed.
10 Although the CTA and Metra receive delivery service
11 from Com Ed for multiple uses, the focus of
12 receiving that has been on our traction power, that
13 is the power and energy that is used on the third
14 rail to move the transit cars from the CTA and for
15 Metra.

16 Com Ed provides power to the CTA and
17 Metra at traction power substations which are
18 operated by the CTA and Metra. The CTA system is
19 operated as a unified integrated system with its own
20 scan (phonetic) of networks. Its operators are in
21 direct contact with Com Ed and, for example, cannot
22 open a breaker at the substation without Com Ed's

1 permission. This is why Com Ed's proposals system
2 modernization projects have little to any benefit to
3 the railroad class. The class itself operates as an
4 integrated system.

5 As to the Phase 0 recommendation in the
6 proposed order, it offers no benefit to the railroad
7 class. The benefit of the AMI devices to be
8 installed under Phase 0 were described by Com Ed
9 witnesses those benefits include, one, AMI allows
10 Com Ed to read meters remotely. This is the
11 benefit. This is not a benefit to the railroad
12 class since its meters already are read remotely.

13 Second, Com Ed's says AMI provides data
14 to customers on a timely basis. Again, the CTA and
15 Metra maintain their own status system. As a
16 result, they have real-time information of the data
17 and operation of their system.

18 The third benefit that Com Ed said was
19 AMI supports home networks. The CTA and Metra do
20 not need home networks. They have a more
21 sophisticated status system for monitoring of
22 electric uses. Com Ed says that AMI includes low

1 limited switches to support demand responses.

2 The CTA is constantly seeking ways to
3 conserve power and energy. We have recently
4 ordered, for example, new train sets that generate
5 electric power when they're breaking, for example,
6 because the CTA and Metra must meet the commuter
7 demands. There are limitations on how the railroad
8 class can react to load-limiting switches.

9 Com Ed says that AMI enables it do read
10 meters remotely when customers move and to turn on
11 meters when a new customer moves in.

12 The CTA and Metra do not on a regular
13 basis move their transit power substations. Even if
14 Com Ed places an AMI device at one of the CTA or
15 Metra traction power substations as part of Phase O,
16 it will have no real benefit to either the CTA or
17 Metra, thus, it is inappropriate for either Rider
18 SMP or rider smart grid to allocate costs to
19 customers such as the railroad class who do not
20 benefit from system imprudence or the smart grid.

21 Lastly, Com Ed has not demonstrated
22 that the AMI devices are needed, that the devices

1 they want to install are compatible with the
2 undefined smart grid, that the AMI devices they want
3 to install today will not have to be replaced or
4 significantly changed in the future when we do know
5 what we want smart grid to look like. Thank you.
6 Any questions?

7 CHAIRMAN BOX: Mr. Balough, earlier we talked a
8 little bit about the language in our last case '05
9 about the public policy asking Com Ed to take a look
10 at that.

11 Wouldn't this be the same thing we are
12 asking Metra and CTA to take a look at the big
13 picture and potential benefit on the whole smart
14 grid and to take that also into account?

15 MR. BALOUGH: We agree smart grid should be
16 looked at, maybe the smart grid should be
17 implemented. Our concern is two-fold: One, the
18 smart grid has not yet been defined. If you look
19 at the definition --

20 CHAIRMAN BOX: I think I understand I think of
21 the big policy issue.

22 COMMISSIONER FORD: Greater good.

1 CHAIRMAN BOX: A greater good.

2 MR. BALOUGH: That's correct. And the other
3 thing is Rider SMP, as it's proposed, does not take
4 a system whereby you track the benefits and the cost
5 to the customers that are paying the costs, so, in
6 essence, what they're doing they're asking us, since
7 it's going to be based on a demand basis and we are
8 one of the larger customers, we would be paying a
9 disproportionate share of the development of the
10 smart grid without knowing what the benefits are.

11 If you did something and you allocated
12 costs based upon the benefits or, you know, the
13 difference between the rider and what would happen
14 later on in the rate case, these costs would be
15 allocated through the customer through their cost
16 allocation studies to the appropriate class paid
17 for. Under the rider, that's not done and it's
18 allocated on a demand basis instead and that's one
19 of our main concerns.

20 COMMISSIONER O'CONNELL-DIAZ: So it is Metra and
21 CTA's position in the other instance that the
22 chairman was just asking you about there's certain

1 societal costs that we all have to pay for at some
2 point in time that should be exclusive and in this
3 instance with regard to this smart grid you should
4 not be a participate in that effort?

5 MR. BALOUGH: That's not what we are saying. We
6 think there should be a careful look at what smart
7 grid is and then make intelligent decisions, You
8 know, especially in technology.

9 The first mover in technology is not
10 always -- that's not always the right move and it's
11 not always a successful one, and that's one of our
12 concerns that we are talking about installing AMI
13 devices right now that we don't know what the whole
14 grid is going to look like, and if you look, I think
15 it's even in this week's Business Week, there are
16 concerns by Excel, for example, out in Colorado as
17 to whether or not they're installing -- is the
18 proper thing being installed.

19 I think you need to take a careful look
20 at and then have an implementation after we all know
21 what it is.

22 COMMISSIONER LIEBERMAN: I bought a PS-2.

1 (Laughter.)

2 CHAIRMAN BOX: It's been a long day. We have one
3 more presentation from CUB, Ms. Soderna.

4 ORAL ARGUMENT

5 BY

6 MS. SODERNA:

7 Last, but not least. Good afternoon,
8 Chairman, Commissioners. My name is Julie Soderna.
9 I represent the Citizens Utility Board.

10 While CUB believes that smart grid
11 technology will essentially provide great benefits
12 to customers if implemented correctly, we must not
13 put the cart before the horse.

14 For all the reasons articulated by
15 Ms. Lusson and others guaranteeing Com Ed recovery
16 Phase 0 costs through Rider SMP before a strategic
17 plan for deployment of smart grid is even in place
18 puts Com Ed customers at significant risk.

19 But aside from the cost-recovery issue
20 with smart grid, CUB recognizes that a true smart
21 grid could enable the expansion of a demand response
22 and energy efficiency program to change customer

1 load shapes and improve utilization of the existing
2 network resulting in lower bills to customers;
3 however, the proposed order gives Com Ed the green
4 light to implement Phase 0 at high performance
5 before the specific technology has been demonstrated
6 to meet established functionality requirements and
7 before a long-term strategic smart grid plan is in
8 place.

9 CUB respectfully submits that the
10 Commission should assert its regulatory authority to
11 insure that appropriate, cost-effective enhancement
12 of the electric grid optimizes the interest of and
13 reduces the risk of customers.

14 To accomplish this, CUB witness
15 Mr. Ron (sic) Cohen recommended that a stakeholder
16 collaborative process be initiated to create a
17 strategic plan and a checklist for any future smart
18 grid investments.

19 The proposed order correctly agrees in
20 large measure with Mr. Cohen's recommendation to
21 analyze the costs and benefits of AMI and the smart
22 grid technology in the context of a collaborative

1 process. If conducted properly, this process will
2 insure that costs are justified to maximize
3 potential benefit. CUB commends the proposed order
4 sought for analysis in this regard, however, in
5 order to facilitate a process that achieves the
6 desired results, the Commission should specify that
7 the technology chosen to implement Phase 0 must
8 include at a minimum established functionality,
9 capability, and interoperability requirements.

10 CUB recommends that the Commission
11 revise the proposed order recommendation, which
12 currently provides for two separate workshops, one
13 for Phase 0 and one for a broader smart grid issue,
14 and instead create one comprehensive collaborative
15 workshop that will lay the groundwork for a truly
16 smart grid.

17 Any delay in the implementation of
18 Phase 0 would be worth the wait to insure that we
19 get the smartest grid possible that provides the
20 most benefit to consumers at the most efficient
21 cost.

22 The Commission must engage in a

1 rigorous planning process because it is imperative
2 that we get this right the first time. Thank you.

3 Any questions?

4 CHAIRMAN BOX: Are there any questions?

5 (No response.)

6 Thank you very much. Mr. Rippie.

7 MR. RIPPIE: Thank you.

8 CHAIRMAN BOX: You don't have to use all your
9 time.

10 MR. RIPPIE: I'll try not to, but, as someone
11 said, I have my doubts.

12 REBUTTAL

13 BY

14 MR. RIPPIE:

15 I should have known better, but I
16 confess, Commissioners and Chairman Box, I'm
17 slightly perplexed. Com Ed is proposing something
18 that has two goals. It's the two goals that I have
19 identified at the beginning of the presentation.
20 It's proposing what it believes to be a vehicle to
21 allow smart grid initiatives that you review and
22 decide are adequately documented, adequately certain

1 meet whatever criteria the Commission chooses to put
2 in place and approved, and it allows us to put them
3 into effect without being in a position where the
4 best we can come out is even and with, at all
5 likelihood, and, in fact, almost certain work we are
6 going to lose money because we are not going to earn
7 a return while we are doing it; moreover, we are
8 going to be in a situation that as the attorneys who
9 argued against this proposal so beautifully
10 illustrated, we are going to get attacked when we
11 come back and try to put this into rate base.

12 The regime that the opponents of this
13 rider ask you to try to foster smart grid under is
14 this. I was quite surprised when Ms. Lusson said
15 it's Com Ed's responsibility to determine if an
16 investment is prudent and reasonable. No, it's not.
17 It's your responsibility to determine it's prudent
18 and reasonable.

19 What's the difference between our
20 position and the AG is we are saying it's better for
21 the state if you tell us that ahead of time.
22 They're saying take the risk, Com Ed. Figure it out

1 for yourself, Granted after some workshops, but the
2 monkey is entirely on your back, and if you decide
3 to invest and it's not 60 million, it's only 60
4 million for Phase 0. It's up to a billion. If you
5 decide to invest, we'll have you free to come in
6 after the fact and second guess that and make all
7 the arguments, many of them contradictory, you've
8 heard today.

9 Now Ms. Lusson says it's wrong to do
10 things before the fact. The company has to make the
11 decisions and traditional regulation is celebrated
12 in that regulation. You come in after the fact and
13 tell us what we have done is right or not, but
14 Ms. Soderna points out that there's a whole lot of
15 things she wants to tell us to do ahead of time.
16 She wants specific requirements on the technology to
17 be imposed by you ahead of time.

18 I suggest the right solution is this.
19 If when a project is proposed to the Commission you
20 decide that there are appropriate technological
21 rules, that there are meters that you want in the
22 technology, tell us. That's what we are asking for

1 in Rider SMP. It will avoid wasted money and it
2 will get the job done. Now is that remodeling a
3 house before you have a whole plan? I don't think
4 so.

5 I take the analogy a little bit
6 different. I buy a house that needs remodeling and
7 it's a fixer-upper, maybe it's out of a rehab
8 program in the city, and I identify ten things that
9 are wrong with it. It needs a new roof. It needs a
10 new bathroom. It needs new plumbing. It needs a
11 new electrical system.

12 The way Com Ed wants to proceed they
13 want to identify the most important things first and
14 come into this Commission and explain how we are
15 going to solve the most important thing. You will
16 tell us we agree, we don't agree, or you need more
17 study, or maybe you got a couple things with the
18 next thing, but that's your call.

19 The opponents to Rider SMP want to say
20 don't come in and tell us we have got to fix the
21 leaking water until after we figure out how we're
22 going to fix the roof, how we're going to fix the

1 bathroom, how we are going to change the cabinets
2 and everything else the project needs.

3 I agree we don't know what the smart
4 grid will look like in ten years. No one knows, but
5 the solution is not to wait and deny yourself a tool
6 while we try to figure that out and, after all,
7 that's what Rider SMP is. It's a wrench. If you
8 approve it, the wrench is in your hands. You can
9 use it to enable a project or not as you may choose,
10 but if you don't approve it, that tool is gone and
11 all Com Ed has the opportunity to pay for it out of
12 its, I guess I would say, at-risk funds.

13 Now I do want to point out a couple of
14 things. First, this investment is different than
15 traditional investments. Why? Much of the answers
16 are provided for you by the objectives. This is not
17 a situation where we have objective standards. It's
18 not like building a substation. There are
19 Commission reviewed-and-approved standards for
20 planning that tell us when a line is overloaded,
21 when a transformer is warn out, when we need to
22 expand some feature of the distribution system.

1 This is, as we have frankly told you
2 from the very beginning, an opportunity to improve
3 service, to go beyond the bare minimum, and bring
4 the state benefits which no one denies of
5 modernization. It's a way to not be eliminated
6 (phonetic). That, however, carries with it some
7 risk. Sorry. It carries with it some risk, and one
8 of the risks that it carries with it is that we're
9 venturing into uncharted territory, and what Rider
10 SMP does is offers a new way of doing business. It
11 proposes a collaborative way of doing business where
12 we, all the stakeholders, and you define how we get
13 there. I would also point out these investments are
14 large. They're not just 60 million, they're much
15 bigger, and I hate to delve in minutia, but I will
16 on one thing.

17 The chart that the Attorney General put
18 up it purports to show a surplus of funds. I would
19 only point out that that chart was relied upon by
20 none of their witnesses excludes from the bottom
21 line number principle repayment on debt. It only
22 includes the interest, and if the suggestion is

1 seriously made that we can fund these things by
2 using cash that might otherwise be devoted to
3 principle repayment, I don't think that's
4 particularly a good policy; moreover, it only goes
5 through 2006, and the evidence is clear that we
6 don't have the money or even the time when it will
7 actually have to be invested.

8 Now there were criticisms that, absent
9 denial Rider SMP, we don't have incentives to do
10 things right. We want to be careful, and with that
11 I would respond in a couple of ways.

12 First you have after-the-fact prudence
13 and reasonable review. What is proved in advance is
14 the prudence of going forward with the project,
15 i.e., of making an investment in a given smart grid
16 technology. We do not receive advance approval of
17 the prudence of the dollars actually spent, nor do
18 we receive approval of the reasonability of the
19 funds that we invest.

20 Now why are consumers not protected by
21 what we invest? I don't want to delve too much in
22 the minutia on that subject, but I would suggest to

1 you this: Number one, you are going to review how
2 we calculate the investments.

3 Number two, I think it's a real stretch
4 to argue that Rider SMP should be rejected because
5 there's a risk that we are going to cook our books
6 to somehow earn more than our allowed return by
7 using creative accounting to modify that test.

8 What is a reality is that if we
9 invest -- and I'll go back to using the hundred
10 dollar example -- if we invest a hundred dollars an
11 hour without Rider SMP in one of these advanced
12 technologies, we will see zero dollars of return
13 until the next rate case comes about. That is the
14 best we can hope for is complete recovery
15 eventually and, in the meantime, as Mr. Ratnaswamy
16 pointed out, for example, in another context on the
17 depreciation reserve in the meantime we recover
18 nothing.

19 The incremental investments that smart
20 grid demand above and beyond the monies we will have
21 to invest anywhere in providing basic service,
22 don't -- simply don't allow that.

1 There have been some questions about
2 the details of AMI Phase O. Again, unless you have
3 questions, I'm not going to spend a great deal of
4 time on it but point out that the briefs discuss
5 that in some detail and the evidence discuss that in
6 some detail.

7 We think there's sufficient evidence in
8 this record to decide that AMI Phase O is
9 appropriate; however, it is not the company's
10 position that the right thing to do is to approve
11 Rider SMP only for AMI Phase O. As I believe
12 Commissioner O'Connell-Diaz said, what would be the
13 point. We think the tool should be adopted
14 generally. AMI Phase O is a sensible first step but
15 it is not a last step.

16 REACT says that customers -- large
17 customers invest in their own smart systems as does
18 CTA and Metra. I certainly agree, but that doesn't
19 provide the kind of benefits that an integrated
20 smart grid provides, including, as several people
21 said, reductions in energy prices and environmental
22 benefits which strangely the CTA thought were

1 sufficient to justify payments before but not on
2 smart grid, and I guess I would also point out that
3 the rate design is a percentage of public
4 distribution charges, not energy, but, again, that's
5 a minor detail.

6 Let me sum up since I have got 40-odd
7 seconds. Let me also say, by the way, if you have
8 any questions on legality issues, Mr. House is
9 prepared to answer them. I don't want to by summing
10 up take away from him.

11 This is a new way of doing business.
12 It's a break from tradition. It is intended to
13 insure that stakeholders are involved in the
14 decision-making process and that you control the
15 decision-making process. It is designed in a
16 balanced way to protect our financial health while
17 also delivering benefits to customers and is
18 designed to insure that we can't over-earn.

19 It strengthens your oversight of what
20 we charge by giving you an after-the-fact review as
21 well as a before-the-fact review.

22 You face a policy decision, then I

1 submit with the scale of commitments that are going
2 to be necessary to make smart grid a reality, we
3 think it's necessary to find new ways to move
4 forward. You have the authority to approve this as
5 a way to do that, to move forward decisively with
6 smart grid technology. You shouldn't let that
7 opportunity slip by. Thank you.

8 CHAIRMAN BOX: Any questions for Mr. Rippie?

9 (No response.)

10 I know we have been here a long time.

11 Ms. Lusson, is there anything you would
12 like to add?

13 MS. LUSSON: Thank you, Commissioner. I do
14 appreciate that. Yes, just a couple of things

15 Mr. Rippie mentioned -- Mr. Rippie
16 made an analogy of a leaky roof. Leaky roofs are
17 associated with basic -- kind of basic electric
18 delivery service that we are talking about here.
19 Repairs have to be paid for, but what Com Ed wants
20 to do with Rider SMP is have ratepayers pay for the
21 sun roof, for the skylight, for the hot tub, and
22 those are obviously metaphors, but that's the

1 problem here.

2 They're asking you to make the decision
3 to go ahead and approve a funding mechanism for
4 projects that they admit are discretionary, aren't
5 necessary for basic utility service, and they're not
6 even sure are prudent use and useful, and let me
7 just add one other thing.

8 The legislature made on real-time
9 pricing in Section 15-107 of the act. If you look
10 at that, there are very specific requirements that
11 the Commission had to make before it could pass on
12 just a tiny portion of those real-time pricing
13 meters, and in the Docket 06-0617, I urge you to
14 take a look at that order before making a decision
15 in this case. That language is explored and the
16 results are discussed in that order, but the
17 important language is this. We are not saying that
18 smart meters are real-time pricing meters.

19 Com Ed accuses us of saying that that's
20 what we are saying. We weren't. What we are saying
21 is this, that Section 16-1-005, 107-85 (sic)
22 requires that the Commission make this finding --

1 the Commission make its findings that the potential
2 for demand reductions will result in net economic
3 benefits, net economic benefits to all residential
4 customers of the electric utility, so there, again,
5 was a very specific finding that the legislature
6 said on just smart meters -- that smart meters,
7 which you know, there's, as Com Ed said in their
8 reply brief on exceptions, no comparison to smart
9 grid technology.

10 If you had to come up and determine net
11 economic benefit before you could approve any kind
12 of ratepayer funding or subsidization of those
13 meters according to 16-107, in that instance for
14 just real-time pricing meters, I certainly think
15 that that kind of a decision or conclusion would be
16 necessary for smart grid investment and you can't do
17 that with this record.

18 I mean, Com Ed admits that because they
19 pulled all the projects at the end of the case. You
20 just can't. The costs are influx. They're based on
21 an RFI and not an RFP. There's just no way to make
22 that kind of conclusion that the net economic

1 benefits are there and that all ratepayers --
2 including Metra, including AARP, our client, that
3 all ratepayers should pay for them, and because
4 these investments will create discretionary
5 services, Com Ed has the ability down the road it
6 can recover costs for discretionary service for
7 those customers who are interested in buying those
8 services, you know, but you can't take ratepayer
9 funds and say, when Com Ed admits, the construction
10 projects that you want those ratepayer funds to
11 finance are not necessary for basic utility service
12 and they are discretionary and just go ahead and
13 assess those to ratepayers. Even if it's just a
14 pilot, it's opened a Pandora's box for taking
15 system modernization and handing the risk and the
16 financing responsibility over to the ratepayers.

17 COMMISSIONER LIEBERMAN: Could --

18 MS. LUSSON: Thank very much.

19 CHAIRMAN BOX: Thank you.

20 COMMISSIONER LIEBERMAN: Could I just ask a
21 question.

22 CHAIRMAN BOX: You could have about 2 o'clock,

1 but go ahead.

2 COMMISSIONER LIEBERMAN: She raised something of
3 interest to me. The real-time pricing case, what
4 the Commission was asked to find and what the record
5 in that docket said, was that if people would reduce
6 demand to peak time, the price in the market would
7 fall and everybody would benefit. That's what we
8 found.

9 COMMISSIONER O'CONNELL-DIAZ: I think the
10 language was potential.

11 COMMISSIONER LIEBERMAN: But that was what the
12 testimony pointed out, and it strikes me that we are
13 in the same boat here at some level. I mean -- to
14 steer your point, I mean the evidence in the record
15 indicates the potential for significant reduction in
16 the wholesale price which would, in fact, benefit
17 everybody else. I guess that's what I'm struggling
18 with.

19 I understand the point you are making,
20 but it seems to me that you have these potential
21 benefits which somehow need to become real before
22 they're of value.

1 MS. LUSSON: The key words I think are net
2 economic benefits and I'm not sure we can even make,
3 and the conclusion that the potential is there for
4 the economic benefits, given the fact that Com Ed
5 has said they cannot guarantee the numbers, and my
6 point in reference --

7 COMMISSIONER O'CONNELL-DIAZ: If they come to us,
8 we have projected and we looked at each project and
9 what those costs are, so it would be the same type
10 of an analysis, it would be done in rate base, so
11 why is this different?

12 MR. LUSSON: It's different, because unlike a
13 rate case, they're coming in before and saying we
14 want to do this. Is that okay with you, call it
15 prudent and make sure ratepayers pay for it before
16 you know anything about whether the project is used
17 and useful.

18 COMMISSIONER O'CONNELL-DIAZ: Every year they
19 look at those costs before they flow through to
20 ratepayers, so how does that work?

21 MR. LUSSON: The reconciliation, but this is what
22 they have asked for is a guarantee that the project

1 will be put into rate base. That prudent
2 determination that comes with Riders SMP is a
3 guarantee that the project will be put in rate base.
4 That's what we want here only the Commission has to
5 provide it here each separate project, but now your
6 decision's only as good as the Constitution, or the
7 statute, or in this case the tariff, that you are
8 basing it on and this tariff is -- there's so many
9 holes in it you could drive a truck through it, so
10 it's creating -- it's undoing a hundred years of
11 investment and rate recovery process that worked
12 well to modernize the system.

13 COMMISSIONER O'CONNELL-DIAZ: And I don't think
14 in a hundred years we have had the kind of energy
15 crisis that we are facing would you agree with that?

16 MR. LUSSON: I think that energy efficiencies and
17 the price of energy are certainly significant
18 concerns that need to be discussed within the
19 context of the collaborative proceeding and what we
20 need to know is how does AMI technology help us with
21 those issues. We don't know. We just don't know.

22 COMMISSIONER O'CONNELL-DIAZ: Well, maybe we need

1 to have some more discussion. Obviously, we need to
2 take some action as a society how we are going to
3 get our hands around this, and I'll just leave it at
4 that.

5 MR. LUSSON: We just think there's a right way
6 and wrong way. We embrace and encourage you and
7 support you in the idea in wanting to take action
8 and wanting to look at new technology. There's a
9 right way to do it and wrong way to do it and this
10 rider process is illegal, and it's complex, and it
11 puts all of the risk on ratepayers instead of the
12 company.

13 CHAIRMAN BOX: We'll leave it at that,
14 Ms. Lussion. Thank you.

15 MS. LUSSON: Thank you very much.

16 CHAIRMAN BOX: I'll assert some authority and I
17 want to thank everyone. It's been a very long
18 afternoon and I believe having everyone have their
19 say and I'm not cutting anybody off. Obviously this
20 has been very helpful to me.

21 This matter is set for pre-bench on
22 Tuesday of next week. The deadline is September 10th

1 and I think that's probably the day. We'll be
2 looking for the final decision on September 10th.
3 But with that, the meeting is adjourned. Thank all
4 all of the presenters.

5 COMMISSIONER FORD: Thank you.

6 COMMISSIONER O'Connell-DIAZ: Thank you.

7 (Whereupon, the above
8 matter was adjourned.)

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